

LAWYERS WITHOUT LICENCES

Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession

Att. Benan Molu – Att. İdil Özcan



LAWYERS WITHOUT LICENCES
Pressures against the Profession of Lawyer after the State
of Emergency and Individuals Not Admitted to the Profession

Att. Benan Molu – Att. İdil Özcan

This version of the report is a shortened translation. The full report is also available in Turkish and please look at the Turkish part.



Yenişehir Mahallesi, Lise Caddesi,
1. Sokak, Güneş Plaza, Kat:3, No: 9
Yenişehir / Diyarbakır
www.tahirelcivakfi.org / info@tahirelcivakfi.org
Telefon: +90 412 228 79 42 Faks: +90 412 228 79 36

LAWYERS WITHOUT LICENCES

Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession

Att. Benan Molu – Att. İdil Özcan

August 2020

CONTENTS

PREFACE BY THE TAHIR ELÇİ HUMAN RIGHTS FOUNDATION	7
PREFACE BY THE AUTHORS.....	9
METHODOLOGY.....	11
I. STATE OF EMERGENCY PERIOD	13
A. Overview of the State of Emergency.....	13
B. INTERFERENCES WITH THE LEGAL PROFESSION DURING THE STATE OF EMERGENCY	16
1. Legal Harassment against Lawyers: Investigations, Criminal Proceedings, Police Custody and Detention.....	16
2. Interferences with the Right to Counsel and the Exercise of the Legal Profession	16
3. Targeting and Closing Down Professional Associations.....	18
4. Assassination of Tahir Elçi	20
II. INDIVIDUALS WHO ARE NOT ADMITTED TO THE PROFESSION OF LAWYER AFTER THE STATE OF EMERGENCY AND THE LEGAL PROCESS.....	23
A. Individuals Not Admitted into the Profession of Lawyer and the Legal Processes.....	28
1. Investigations and Prosecutions	29
2. Dismissals by Emergency Decrees	30
3. Academics for Peace.....	31
4. Disciplinary Sanctions Due to Investigations and Prosecutions.....	32
B. Administrative Court Decisions Concerning Individuals Not Admitted to the Profession of Lawyer.....	33
1. Administrative Courts	33
a) Article 5 of the Attorneyship Law.....	33
i. Discretionary power of administrative authorities.....	34
ii. Indefinite nature of decisions postponing admission	35
iii. Application of Article 5/3 in case of investigations	36
iv. Application of Article 5/1-a to suspension of the pronouncement of the verdict.....	36

v. Discussions on the constitutionality of Article 5, demands and suggestions	37
b) Profession of Lawyer Considered as Public Service.....	38
2. Courts of Appeal.....	40
3. The Council of State	41
c. The Constitutional Court	41
d. Social, Psychological and Economic Effects of Legal Harassment on Individuals Not Admitted to the Profession	43
 III. AN ASSESMENT IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL GUARANTEES REGARDING ADMISSION TO THE PROFESSION OF LAWYER	47
A. Principles and Recommendations Regarding the Profession of Lawyer and Admission to the Profession in International Documents	47
B. Rights Violations Caused by Preventing Entry into the Profession, According to the Jurisprudence of the European Court of Human Rights	52
1. Violation of the Right to Fair Trial	53
a) Right to Access to a Court	53
b) Right to a Reasoned Judgment.....	54
c) Reasonable Time Principle in Length of Proceedings	54
d) Presumption of Innocence	56
2. Violation of the Right to Respect for Private and Family Life.....	57
3. Violation of the Freedom of Expression, Assembly and Association.....	59
4. Violation of the Right to Property.....	62
5. Violation of Article 18 – Prohibition from restricting the rights and freedoms for purposes not prescribed by the Convention.....	64
 IV. CONCLUSION AND RECOMMENDATIONS.....	67
RECOMMENDATIONS.....	73

PREFACE BY THE TAHİR ELÇİ HUMAN RIGHTS FOUNDATION

In undemocratic, authoritarian or despotic regimes, it is observed that the state which has the monopoly over power lacks the will to share this power. If the spirit of the laws, which are amongst the means to preserve this power, does not stem from the common will of the society, there will be decline and collapse in many areas such as social order and economy, health care and education, law and politics. Such a weakening or collapse constantly keeps the debate on and the polarisation between politics and law relevant.

The law and politics debate determines its position, not only by the public nature of the profession of lawyer, but also by the fact that this identity is a focal point for political opposition. The relationship between law and politics, matured by the socio-economic changes following the last military coup in Turkey, has brought with it an increasing attention to the profession of lawyer and hence an increase in the number of lawyers. This progress has led to the empowerment of bar associations as the professional organisation of lawyers, as well as occasional disagreements or decline. That said, bar associations and the profession of lawyer have also opened up a front which keeps political and legal dynamism alive.

The previous coups and the “attempted coup” on 15 July 2016 have created a terrain where politics can establish a “checkmate” relationship with law. This situation, which resulted in favour of politics and in the detriment of law, has also weakened the legal field. One of the most important results of this weakening was the violations caused by the regime of decrees-in-law, which limited the freedom of lawyers to practice their profession, interrupted parliamentary mechanisms and normalised the state of exception.

This research conducted by the Tahir Elçi Human Rights Foundation demonstrates, in light of the data collected, the scope of the interferences with the profession of lawyer as a manifestation of state of emergency practices within increasingly narrowing distinctions between politics, ideology and law; and with national and inter-

national legislation and comparative examples, presents the situation of lawyers who were not admitted to the profession after the state of emergency, and provides possible solutions. We extend our gratitude to Att. Benan Molu and Att. İdil Özcan for their valuable work.

Türkan Elçi

President

On behalf of the Tahir Elçi Human Rights Foundation

PREFACE BY THE AUTHORS

Lawyers and the profession of lawyer in Turkey became subject to numerous interferences during and after the state of emergency period. One of these interferences is the refusal of admissions to the profession of lawyer. On the basis of dismissals and ongoing investigations or prosecutions, even with decisions of non-prosecution or acquittal, bar associations, the Union of Turkish Bar Associations ('the UTBA') and the Ministry of Justice decide to reject or postpone admission requests, and administrative courts decide for the removal of lawyers from bar rolls.

The number of individuals who were not admitted to the profession increased considerably after the state of emergency and became a systematic problem. For this reason, Tahir Elçi Human Rights Foundation decided to prepare a report on this issue. The primary aim of this research was to document these violations and to gather reliable data to uncover the systematic nature of the problem, to create a source of reference, to draw attention to the violations and to present a road map to remedy these violations. The report will be shared with regional and international institutions and lawyers' organisations. The report is also intended as an *amicus curiae* for applications before the Constitutional Court and the European Court of Human Rights ('the ECtHR' or 'the Court').

We would like to thank the Coordination Group against Seized Licences, trainee attorneys Abdullah Bişaroğlu and Yağmur Kavak, Att. Serde Atalay, Att. Cenk Konukpay, Att. Mehmet Baran Selanik, Member of Parliament Sezgin Tanrıkulu, Halit Bingöllü, Çağlar Karakış, Head of the Istanbul Bar Association Mehmet Durakoğlu, Head of the Izmir Bar Association Özkan Yücel, UTBA Board Members Att. Zafer Köken and Att. Eyyüp Sabri Çepik, and to all participants and their lawyers who agreed to take part in this research by sharing information and documents with us.

Finally, we would like to thank the Etkiniz-European Union Programme, Murat Çekiç and Dicle Çakmak, the Tahir Elçi Human Rights Foundation, Türkan Elçi, Att. Neşet Girasun, Att. Mürsel Ekici and Fırat Akman for their generous support.

We hope that this report will shed a light on this problem giving rise to various, serious human rights violations and will contribute to the resolution of this issue.

Att. Benan Molu – Att. İdil Özcan

METHODOLOGY

The research for this report was conducted between 13 June - 31 August 2020. A press review was conducted to compile news on affected individuals. Those who appeared in the press review were contacted and more participants were reached through their referral. At the same time, the Tahir Elçi Human Rights Foundation released an online call for participants. Some people who first contacted us but later did not respond or send a consent form could not be included in the report. Some people who received their licenses or whom the Ministry of Justice brought trials against voiced certain concerns and later decided not to participate.

Out of 59 people who initially contacted us, 44 consented to appearing in the report, 40 of whom shared with us information and documents. We took into consideration information made available to us by 29 July 2020 latest. Amongst these 44 participants, 24 participants were barred from practising as a lawyer due to investigations and prosecutions and 20 were barred for having been dismissed with an emergency decree. 15 of those who were dismissed also faced investigations and prosecutions, five of whom were Academics for Peace. All participants filled out an informed consent form. Some participants wished to use their initials or remain anonymous and others consented to the use of their full name.

One-to-one interviews were held with participants who especially drew public attention to this issue, who faced a different situation or who were at the intersection of different groups of participants. Respondents were asked to describe the legal process, to reflect on the social, psychological, and economic effects they experienced, and to suggest potential solutions directed at bar associations, the UTBA and the Ministry of Justice for the resolution of this issue. As an important party to the problem, interviews were also held with the UTBA Board Member Att. Eyyüp Sabri Çepik, Head of the Istanbul Bar Association Att. Mehmet Durakoğlu and Head of the Izmir Bar Association Att. Özkan Yücel. They were asked questions on the attitude of the Ministry of Justice, the UTBA and the bar associations. We were unable to meet with the heads of the bar associations who did not respond to our requests for interviews. All interviews were held online due to the Covid-19 pandemic.

In order to obtain more information on the number of cases and the status of pending applications, several members of parliament submitted parliamentary inquiries to the Ministry of Justice.¹ Att. Benan Molu also submitted a request for information to the Presidency's Communication Centre. As of 31 August 2020, the requests were left unanswered. A request for information submitted to the Constitutional Court was answered on 6 July 2020 but provided no substantial response.

1 See Barış Atay Mengüllüoğlu, Parliamentary Inquiry to the Ministry of Justice, 29 May 2020, <https://www2.tbmm.gov.tr/d27/7/7-30203s.pdf>; Oya Ersoy, Parliamentary Inquiry to the Ministry of Justice, 10 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-30557s.pdf>; Ebru Günay, Parliamentary Inquiry to the Ministry of Justice, 10 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-30695s.pdf>; Züleyha Gülüm, Parliamentary Inquiry to the Ministry of Justice, 12 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-30865s.pdf>; Ömer Faruk Gergerlioğlu, Parliamentary Inquiry to the Ministry of Justice, 16 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-31282s.pdf>; Musa Piroğlu, Parliamentary Inquiry to the Ministry of Justice, 23 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-31292s.pdf>; Sezgin Tanrıkulu, Parliamentary Inquiry to the Ministry of Justice, 26 June 2020, <https://www2.tbmm.gov.tr/d27/7/7-31295s.pdf>.

I. STATE OF EMERGENCY PERIOD

A. Overview of the State of Emergency

Following the coup attempt on 15 July 2016, a state of emergency was declared in Turkey. Both the declaration of the state of emergency and its almost automatic prolongation was criticised by many international organisations and civil society organisations. The state of emergency came to an end on 17 July 2018, but its effects lingered on.

Due to state of emergency decrees, a considerable number of people were dismissed, organisations were closed, and legislative changes were introduced. According to official numbers, 125.678 individuals were dismissed from public service, 2761 associations and organisations were closed.² Among these were 176 media organisations, 1424 associations, 145 foundations, 19 unions and confederations, and 15 universities.³ “Membership”, “affiliation”, “connection” or “contact” with terrorist organisations were put forward as grounds for measures taken under state of emergency decrees.⁴

Amongst those who were dismissed were many members of the judiciary and academics. According to numbers announced by the Ministry of Justice, between 15 July 2016 and September 2019, a total number of 3926 judges and prosecutors were dismissed.⁵ It has been reported that this number corresponds to approximately 30% of all members of the judiciary who were in office in Turkey at the time.⁶ 6081 academics were dismissed

2 State of Emergency Inquiry Commission, “Announcement on State of Emergency Inquiry Commission Decisions”, 3 July 2020, <https://ohalkomisyonu.tccb.gov.tr/#collapse-44>.

3 Türkiye İnsan Hakları Vakfı [Human Rights Foundation of Turkey], “2019 HRFT Activity Report”, <https://tihv.org.tr/calisma-raporlari/2019-tihv-calisma-raporu/>.

4 See comments by the Council of Europe Human Rights Commissioner in her Report following her visit to Turkey, 19 February 2020, <https://rm.coe.int/090000168099823e>, § 40.

5 Cumhuriyet, “Adalet Bakanı Gül, 15 Temmuz’dan bu yana meslekten çıkarılan hakim ve savcısı sayısını açıkladı”, 25 November 2019, <http://www.cumhuriyet.com.tr/haber/adalet-bakani-gul-15-Temmuzdan-bu-yana-meslekten-cikarilan-hakim-ve-savcisi-sayisini-acikladi-1704194>.

6 European Commission, 2018 Turkey Report, 17 April 2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>, p. 23.

with emergency decrees. 398 of those dismissed were Academics for Peace.⁷

The emergency decrees prescribed that those who are dismissed cannot be employed in and cannot be directly or indirectly assigned to public service. Numerous additional measures were taken. The dismissals had “a devastating effect” on both those who were dismissed and their families.⁸ Many people were stigmatised for having been dismissed, could not find jobs even in the private sector and were condemned to a “civil death” without any income and security.⁹

Legal recourse against state of emergency measures remained unclear for a long time and caused confusion even amongst legal practitioners.¹⁰ To overcome concerns regarding access to justice, a State of Emergency Inquiry Commission was established¹¹ and was accepted by the ECtHR as a domestic remedy to be exhausted.¹² Following this decision, 12600 pending applications were struck out of the list by the Court.¹³

One of the most permanent impacts of the state of emergency were legislative changes. The legal review of state of emergency decrees became virtually impossible as the Constitutional Court declared that it had no jurisdiction to review these decrees.¹⁴ Certain state of emergency powers became part of ordinary legislation with Law no.

7 Human Rights Foundation of Turkey, “Akademisyen İhraçları: Hak İhlalleri, Kayıplar ve Güçlenme Süreçleri Raporu”, November 2019, <https://tihvakademi.org/wp-content/uploads/2020/02/akademisyenihracariy.pdf>.

8 Amnesty International, “Purged Beyond Return? No Remedy For Turkey’s Dismissed Public Sector Workers”, 2017, <https://www.amnesty.org/download/Documents/EUR4492102018ENGLISH.PDF>.

9 Council of Europe Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35), §§ 33, 41; Council of Europe Commissioner for Human Rights, Report Following Her Visit To Turkey From 1 to 5 July 2019, 19 February 2020, <https://rm.coe.int/090000168099823e>, § 87.

10 Council of Europe Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35), § 44.

11 Venice Commission, On Emergency Decree Laws Nos. 667-676 Adopted Following The Failed Coup Of 15 July 2016, 12 December 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e).

12 Köksal v. Türkiye, no. 70478/16, 6 June 2017, § 29.

13 Diken, “Gerekçe, OHAL Komisyonu: AİHM, KHK’lara ilişkin 12 bin 600 başvuruyu reddetti”, 14 July 2017, <http://www.diken.com.tr/gerekce-ohal-komisyonu-aihm-khklara-iliskin-12-bin-600-basvuruyu-reddetti/>.

14 Constitutional Court of Turkey, E: 2016/167, K: 2016/160, Date of decision: 12 October 2016, <http://kararlaryeni.anayasa.gov.tr/Karar/Content/04955a1a-a3e0-417b-8702-1005d98f8252?highlightText=khk&excludeGerekce=False&wordsOnly=False>.

7145, hence rendering the “temporary” state of emergency “permanent”. These included legislative amendments such as continuing dismissals for a three-year period following the entry into force of this Law, powers allowing governors to declare curfews, the possibility to extend the maximum period of police custody to twelve days for terrorism charges and some other collective crimes.¹⁵ The Constitutional Court rejected a large portion of annulment requests. Finally, the constitutional amendments, accepted through a referendum held under state of emergency conditions in April 2017, completely changed the governmental system and the judiciary in Turkey.

The state of emergency period was also marked by grave human rights violations, such as torture, ill-treatment¹⁶, and enforced disappearances¹⁷. Notably right to liberty and security, freedom of expression, press, assembly and association were severely restricted. Events such as demonstrations and rallies, union activities, academic panels, theatre plays were cancelled by Governors’ decisions. 95 mayors and municipal councillors were removed from office due to “terrorism or aiding and abetting terrorist organisations”. Restrictions to fundamental rights and freedoms during and after the state of emergency especially targeted the opposition, the press and human rights defenders. Many were taken into custody or detained and were charged under the Penal Code or the Counter Terrorism Law.

During and after the state of emergency, lawyers were without doubt one of the most affected groups. Prevented from properly practicing their profession and defending their clients, lawyers were subject to increasing pressure, were taken into custody, detained, exposed to legal harassment through investigations and criminal proceedings due to being associated with their clients, and their rights to defend and be defended were restricted in various ways.

15 Official Gazette, 7145 sayılı Bazı Kanun Ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun, 31 July 2018, <https://www.resmigazete.gov.tr/eskiler/2018/07/20180731-1.htm>.

16 Human Rights Foundation of Turkey, Activity Report (June 2017-June 2018), 2 June 2018, https://tihv.org.tr/wp-content/uploads/2019/07/%C3%87a1%C4%B1%C5%9Fma-Raporu-2018_tihv.pdf, p. 9-12; Human Rights Watch, “In Custody: Police Torture and Abductions in Turkey”, 12 October 2017, https://www.hrw.org/sites/default/files/report_pdf/turkey1017_web_0.pdf.

17 İnsan Hakları Derneği, “2017 İnsan Hakları İhlalleri Raporu”, <https://www.ihd.org.tr/2017-insan-haklari-ihlalleri-raporu-ohal-altinda-gecen-bir-yil/>; Human Rights Watch, “In Custody: Police Torture and Abductions in Turkey”, 12 October 2017, https://www.hrw.org/sites/default/files/report_pdf/turkey1017_web_0.pdf.

B. INTERFERENCES WITH THE LEGAL PROFESSION DURING THE STATE OF EMERGENCY

1. Legal Harassment against Lawyers: Investigations, Criminal Proceedings, Police Custody and Detention

Lawyers have been under ongoing legal harassment for reasons related to their professional activities, as a reprisal for their fight against rights violations.¹⁸ According to a report prepared by the Arrested Lawyers Initiative and the Italian National Bar Council, there are 1546 lawyers against whom proceedings are ongoing since the state of emergency. 345 of them have been convicted before first instance courts, 605 were or are still being kept in prison.¹⁹ These practices of targeting and pressurising lawyers pursue a political aim contrary to Article 18 of the European Convention on Human Rights ('the ECHR' or 'the Convention') and aims to silence and punish the clients they represent. The Council of Europe Human Rights Commissioner has specifically voiced her concern "that the Turkish authorities and judiciary have adopted an increasingly suspicious and hostile attitude towards lawyers" and that this targeting "create[d] a clear chilling effect for the entire profession."²⁰

2. Interferences with the Right to Counsel and the Exercise of the Legal Profession

Numerous emergency decrees introduced legislative changes that heavily restrict the right to counsel and hinder the exercise of the legal profession. According to these amendments, meetings between lawyers and certain clients can be recorded or can be observed by an officer. Furthermore, exchanged documents and files can be confiscated, the date and time of the meetings can be restricted, and the meetings can even be prohibited.²¹ If the aim of the criminal investigation is jeopardised, the lawyer's right to examine or take copies of documents from the file can be restricted by a prosecutor's decision.²² For certain crimes, the right to counsel for the person in custody can be

18 Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey", 10 April 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

19 The Arrested Lawyers Initiative and Italian National Bar Council, *Mass Prosecution Of Lawyers In Turkey: Unjust Arrests & Convictions (2016-2020)*, April 2020, <https://arrestedlawyers.files.wordpress.com/2020/04/rapporto-febbraio-2020-delle28099associazione-arrested-lawyers-initiative-sulla-persecuzione-di-massa-degli-avvocati-in-turchia-inglese.pdf>.

20 Council of Europe Commissioner for Human Rights, "Report Following Her Visit To Azerbaijan From 8 To 12 July 2019", 19 February 2020, <https://rm.coe.int/avrupa-konseyi-insan-haklari-komiseri-dunja-mijatovic-1-5-July-2019-/16809c5187>, § 177.

21 Article 6 of the Emergency Decree No. 667.

22 Article 3 of Emergency Decree No. 668.

restricted for up to five days.²³ The scope of restrictions were later expanded and the regulations became applicable also to convicts.²⁴ With the same decree, the five-day restriction period for the right to counsel was reduced to twenty-four hours and it was added that the suspect's testimony will not be taken.²⁵

The right to counsel was also restricted during the hearings. A maximum of three lawyers were allowed to be present in hearings in proceedings concerning crimes committed as part of a criminal organisation's activities.²⁶ It was stipulated that hearings may take place "if the counsel leaves the hearing without an excuse"²⁷, even when the counsel "does not arrive at the hearing"²⁸, and that "the absence of the obligatory lawyer does not prevent the judgment from being proclaimed".²⁹

Finally, a lawyer who acts as counsel for suspects, defendants or those who have been convicted for establishing a criminal organisation, establishing and leading an armed organisation, and for terrorism charges, can be barred from their duty as counsel if they themselves are subject to investigations or proceedings under the same charges.³⁰ The Arrested Lawyers Initiative estimated that the number of lawyers who were barred from representing their clients has now approached 400.³¹ It was noted that this issue affects lawyers notably from organisations which were closed down with emergency decrees.³² According to the report of Human Rights Watch, prior to the coup attempt, "Human Rights Watch [had] not documented any case of lawyers being barred from cases", yet in the post-coup period, many examples were recorded.³³ Their report as a whole clearly demonstrates that lawyers in Turkey are under constant "legal harassment".

23 Emergency Decree No. 668.

24 Article 6 of Emergency Decree No. 676.

25 Emergency Decree No. 676.

26 Article 1 of Emergency Decree no. 676.

27 Article 5 of Emergency Decree no. 676.

28 Emergency Decree No. 696.

29 Emergency Decree No. 694

30 Article 2 of Emergency Decree No. 676

31 The Arrested Lawyers Initiative, The Rights to Defense and Fair Trial Under Turkey's Emergency Rule, <https://arrestedlawyers.files.wordpress.com/2018/02/the-rights-to-defense-fair-trial-in-turkey.pdf>, p. 10.

32 Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey", 10 April 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

33 Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey", 10 April 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

3. Targeting and Closing Down Professional Associations

A total number of 34 law associations from 20 different cities were closed down during the state of emergency³⁴, on the grounds that they were associated to or had contact with FETÖ/PDY.³⁵ Amongst these were Progressive Lawyers Association (*Çağdaş Hukukçular Derneği*), Lawyers for Freedom Association (*Özgürlükçü Hukukçular Derneği*), Mesopotamia Lawyers Association (*Mezopotamya Hukukçular Derneği*), Justice School Association (*Adalet Okulu Derneği*). All their assets were transferred to the Treasury without remuneration.³⁶ Both during and after the state of emergency, members of these associations were taken into custody and detained.

Bar associations were also put under serious pressure. 14 former or current presidents from 12 bar associations were taken into custody or detained on the grounds that they are members of FETÖ/PDY; former presidents of several provincial Bar Associations were removed from office or were forced to resign, and were given prison sentences between two to fourteen years on the grounds that they were members of an armed organisation.³⁷ The Diyarbakır Bar Association in particular was repeatedly targeted, also by the Minister of Interior, and even faced physical attacks.³⁸ Numerous statements and reports by the Diyarbakır Bar Association also became subject to in-

34 International Coalition of Legal Organisations, “Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey”, January-February 2020, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7232&file=EnglishTranslation>.

35 See *Baş v. Turkey*, No. 66448/17, 3 March 2020, § 8: “The day after the attempted military coup, the national authorities blamed the network linked to Fetullah Gülen, a Turkish citizen living in Pennsylvania (United States of America) and considered to be the leader of an organisation referred to by the Turkish authorities as ‘FETÖ/PDY’ (‘Gülenist Terror Organisation/ Parallel State Structure’).”

36 Official Gazette, 677 Sayılı Olağanüstü Hal Kapsamında Alınan Tedbirlere İlişkin Kanun Hükmünde Kararname, 22 November 2016, <https://www.resmigazete.gov.tr/eskiler/2016/11/20161122-1.htm>.

37 International Coalition of Legal Organisations, “Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey”, January-February 2020, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7232&file=EnglishTranslation>.

38 See, for instance, Diyarbakır Barosu, “Tahir Elçi’yi Aldığımız Yerdeyiz”, 18 June 2018, <https://www.diyarbakirbarosu.org.tr/haberler/tahir-elciyi-aldiginiz-yerdeyiz>; Diyarbakır Barosu, “Barolardan Ortak Ses: Tahir Elçi’yi Aldığımız Yerdeyiz”, 22 June 2018, <https://www.diyarbakirbarosu.org.tr/haberler/barolardan-ortak-ses-tahir-elciyi-aldiginiz-yerdeyiz>; Duvar Gazetesi, “Diyarbakır Barosu’ndan Soylu hakkında suç duyurusu”, 22 June 2018, <https://www.gazeteduvar.com.tr/gundem/2018/06/22/diyarbakir-barosundan-soylu-hakkinda-suc-duyurusu/>; Diyarbakır Barosu, “Saldırıya Uğrayan Diyarbakır Barosuna 55 Barodan Destek Açıklaması”, 2 March 2019, <https://www.diyarbakirbarosu.org.tr/haberler/saldiriya-ugrayan-diyarbakir-barosuna-55-barodan-destek-aciklamasi>.

vestigations and criminal proceedings, and charges were brought against former board members of the Bar Association.³⁹

Finally, bar associations were again targeted recently as Ankara, Izmir, Diyarbakır and Istanbul Bar Associations criticised a statement which constituted hate speech against homosexuals, delivered by the Head of the Directorate of Religious Affairs. Following criminal complaints from the Directorate of Religious Affairs, an investigation under “insulting the religious values of a part of the population” against Ankara and Diyarbakır Bar Associations was initiated⁴⁰, and a criminal complaint against the Istanbul Bar Association Human Rights Centre was filed by a lawyer.⁴¹ The statement of the Head of the Directorate of Religious Affairs and the criminal investigations initiated against bar associations were condemned by many national and international human rights organisations.⁴²

Bar associations became targets because of their work and efforts on issues such as torture, disappearances under police custody, violence against women, refugees, LGBTI+ rights and trustees appointed to municipalities. The criticism voiced against the Directorate of Religious Affairs was “the last straw”. The amendments proposing multiple bar associations⁴³ and changes in the election system of the UTBA came into force on 15 July 2020. When heads of bar associations and lawyers heavily objected

39 Hak Savunucuları İçin Sessiz Kalma – Diyarbakır Barosu, 28 April 2020, <https://www.sessiz-kalma.org/defender/diyarbakir-barosu/>; Duvar Gazetesi, “Diyarbakır Barosu eski yöneticilerine dava”, 24 December 2019, <https://www.gazeteduvar.com.tr/gundem/2019/12/24/diyarbakir-barosu-eski-yoneticilerine-dava/>

40 Amerika'nın Sesi, “Diyanet ve Barolar Neden Karşı Karşıya Geldi?”, 29 April 2020, <https://www.amerikanin sesi.com/a/diyanet-ve-barolar-neden-karsi-karsiya-geldi/5397901.html>.

41 Sabah, “İstanbul Barosu Hakkında Suç Duyurusu”, 28 April 2020, <https://www.sabah.com.tr/gundem/2020/04/28/istanbul-barosu-hakkinda-suc-duyurusu>

42 Bianet, HRW: Homofobik Açıklamalara Ses Çıkartanlara Başlatılan Soruşturmalar Derhal Düşürülmeli, 1 May 2020, <http://bianet.org/bianet/toplumsal-cinsiyet/223713-hrw-homofobik-aciklamalara-ses-cikartanlara-baslatilan-sorusturmalar-derhal-dusurulmeli>; Bianet, 16 Hak Örgütünden Açıklama: Diyanet İşleri'nin Açıklaması Kabul Edilemez, 30 April 2020, <http://bianet.org/bianet/lgbti/223655-16-hak-orgutunden-aciklama-diyamet-isleri-nin-aciklamasi-kabul-edilemez>; Amnesty International, “Türkiye: Hükümet Yükselen Homofobi ve Transfobiyle Mücadele Etmek İçin Tedbir Almalı”, 14 May 2020, <https://amnesty.org.tr/icerik/turkiye-hukümet-yukselen-homofobi-ve-transfobiyle-mucadele-etmek-icin-tedbir-almali>; Ortak açıklama: Türkiye'deki LGBTİ+'lara yönelik nefret söylemi ve planlı saldırılara son verilmeli, 8 May 2020, <https://amnesty.org.tr/icerik/ortak-aciklama-turkiyedeki-lgbtilara-yonelik-nefret-soylemi-ve-planli-saldirilara-son-verilmeli>.

43 For more information see, Human Rights Watch, “The Reform of Bar Associations in Turkey: Questions and Answers”, <https://www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers>.

to this amendment, their demonstration march and entry to Ankara was blocked by police. They were effectively held in custody, battered by police officers, and were left without food, water, or shelter for 27 hours.

4. Assassination of Tahir Elçi

Appointed as president of the Diyarbakır Bar Association in 2012, Tahir Elçi worked as the victim's counsel in cases concerning the burning of villages, extrajudicial killings, assassinations by unknown assailants in the 1990s. He contributed to the jurisprudence of the ECtHR and attained significant achievements in the fight against impunity with violation judgments in cases he brought before the ECtHR. As a human rights defender, as well as a founder and a volunteer for several national and international human rights organisations, Elçi addressed also social matters, such as human rights issues in Diyarbakır and in the region, and the peace process.

Elçi was targeted and received a great number of insults and death threats due to his statements on a live television programme, where he was invited to share his opinion on the increase in acts of terrorism and the future of the peace process following the bomb attack in Ankara on 10 October 2015. An arrest warrant was issued. He was taken into custody at the Diyarbakır Bar, was brought to Istanbul and was released with a judicial control and a travel ban. On 23 October 2015, an indictment was prepared under the charges "terrorist organisation propaganda via press", asking for a prison sentence from 1.5 years to 7.5 years.

After being heavily targeted in the press and by the public, Tahir Elçi was assassinated on 28 November 2015 during a press conference.

Although Elçi was killed before the state of emergency period, his killing must be mentioned as it signifies the most extreme of attacks on lawyers and has since gone unpunished.

Despite calls for an effective investigation from around the world, the assassination of Tahir Elçi, who had dedicated his life to the fight against impunity, went unpunished. The crime scene was not properly investigated, evidence was not correctly collected or preserved. The guns of police officers present at the scene were not put through a criminal examination. The vital moments of the CCTV footage which could shed light on the murder was deleted. Despite hundreds of petitions submitted by lawyers, the case file in its entirety was not shared with them and most of their requests were neglected or dismissed.

According to a report by Forensic Architecture, it was not possible for Elçi to be murdered by bullets fired by PKK militants. The suspicion focused on the three police officers present at the crime scene, notably on the one who fired his gun when there

was an open firing line towards Elçi.⁴⁴ Based on this report, the Diyarbakır Bar Association requested the three police officers to be interviewed as “suspects”, rather than “witnesses”. Following their testimonies, an indictment was prepared, four years after the incident. The police officers were charged with “causing death by culpable negligence” with three to nine years of prison sentence, and one militant was charged with “killing two police officers”, “attempting to kill one police officer” and “killing Elçi with eventual intent” with three times aggravated life imprisonment.

The Tahir Elçi Human Rights Foundation considered that combining Elçi’s assassination with the death of two police officers who were killed by PKK militants and charging the police officers with “negligence” was an attempt to exonerate the suspected police officers.⁴⁵

The first hearing for the case on Elçi’s assassination will take place on 21 October 2020 in Diyarbakır.

44 Forensic Architecture, “The Killing of Tahir Elçi”, <https://forensic-architecture.org/investigation/the-killing-of-tahir-elci>.

45 Tahir Elçi Human Rights Foundation, “Tahir Elçi Cinayeti Karartılamaz”, 27 March 2020, <http://www.tahirelcivakfi.org/tahir-elci-cinayeti-karartilamaz/>.

II. INDIVIDUALS WHO ARE NOT ADMITTED TO THE PROFESSION OF LAWYER AFTER THE STATE OF EMERGENCY AND THE LEGAL PROCESS

One of the most important aspects of legal harassment against lawyers and their profession is preventing individuals from starting their legal traineeship and removing lawyers from bar rolls. Hundreds are indefinitely barred from practising as a lawyer on the grounds that they were dismissed with an emergency decree or that they are being investigated or prosecuted.

Statistics from the Ministry of Justice reveal the gravity of the situation. While the number of licence applications increased over the years, the number of application files rejected and sent back by the Ministry have increased disproportionately. When in 2008 only 0.32 % of all files were sent back to the UTBA, this number rose to 1.20 % in 2016 and 3.56 % in 2019 (Table 1, Figure 1).

	Total number of files	Number of files sent back to the UTBA (Excluding those sent because of missing documents)	Percentage of files sent back in all files	Number of trainee lawyer who were given licences
2008	4102	13	%0.32	3787
2009	3635	11	%0.30	3344
2010	4581	4	%0.09	4263
2011	4561	22	%0.48	4263
2012	4439	26	%0.59	4160
2013	6371	18	%0.28	6183
2014	8364	28	%0.33	8036
2015	7765	46	%0.59	7371
2016	8468	102	%1.20	8079
2017	9931	91	%0.92	9663
2018	13007	134	%1.03	12680
2019	14836	528	%3.56	13718

Table 1: Statistics on Licence Applications (Source: Ministry of Justice, Annual Activity Reports, <https://www.adalet.gov.tr/faaliyet-raporlari>).

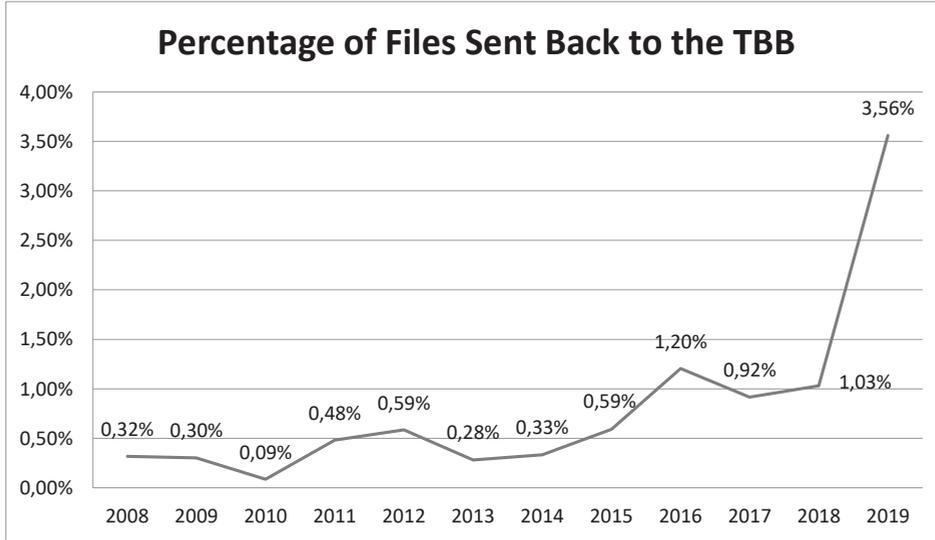


Figure 1: Percentage of files sent back to the UTBA in all files (Source: Ministry of Justice, Annual Activity Reports 2008-2019). Files sent back to the UTBA because of missing documents were excluded from the numbers.

In response to a parliamentary inquiry submitted on 8 April 2019, the Ministry of Justice responded that, as of 21 February 2019, 598 lawsuits for annulment of lawyers' licences had been filed before administrative courts. The courts ruled for annulment in 252 cases, rejected the annulment request in 8 cases and 17 cases were dropped. 321 cases were still pending.⁴⁶

According to statistics obtained from the UTBA on 13 August 2020, there were 1252 cases filed by the Ministry of Justice against admission decisions. In 376 cases the licence was annulled. In 175 cases the Ministry's request was denied. 701 cases were still pending. In addition, 243 cases were filed against the UTBA by candidate lawyers, 137 of such cases were pending. One case was dismissed. The request to be registered with the bar was denied in 104 cases and was accepted in only one case.

According to the statistics from the bar associations, 26 lawyers were removed from the Izmir Bar Association roll following a lawsuit filed by the Ministry of Justice. The Ministry filed a lawsuit against 131 lawyers registered with the Istanbul Bar Association, six cases were dismissed. In 55 decisions out of 61 final decisions, the lawyer was removed from the bar roll. The rest of the cases are pending. As for individuals dismissed by emergency decrees, 72 lawyers in Istanbul (63 following court orders and 9 following the Bar's decision) and 38 lawyers in Izmir were removed from the bar roll.

⁴⁶ Ministry of Justice response to the inquiry no. 7/9539 by MP Zeynel Emre, 26 June 2020, <https://www.tbmm.gov.tr/d27/7/7-9529sgc.pdf>.

Article 20 of the Attorneyship Law No. 1136 regulates the process regarding traineeship applications to the bar associations and Article 8 regulates the process regarding license applications. In traineeship applications, the relevant bar association decides on the application and the decision is notified to both the applicant and the Prosecutor's Office. Bar association board members, the prosecutor or the applicant may appeal against the decision to the UTBA. The Ministry of Justice submits an opinion regarding the UTBA's decision and sends decisions it deems inappropriate back to the UTBA. The Ministry of Justice, the applicant, and the relevant bar association may bring a case before the administrative courts against the UTBA's decisions at this point.

As for license applications, the candidate lawyer first applies to the bar association. The candidate may appeal to the UTBA if their license request is denied or if their admission is postponed. Once the admission decision is delivered, the file is referred to the UTBA, which either approves this decision or sends it back to the bar association. The approval decisions of the UTBA are presented to the Ministry of Justice, which may send decisions back to the UTBA if deemed inappropriate. The UTBA may change its decision in line with the Ministry of Justice opinion or may uphold its previous decision. The Ministry of Justice, the applicant or the relevant bar association may bring a case before administrative courts against the decision of the UTBA.

As will be discussed further, where the applicant has been dismissed by an emergency decree or is being investigated and/or prosecuted, bar associations and the UTBA sometimes reject these applications or postpone admission until the end of the investigation or the prosecution.

All respondents have pointed out that this problem emerged after the coup attempt on 15 July 2016. The increase in the frequent application of Article 5/3 of the Attorneyship Law can also be observed in the statistics. Some of the respondents believed that the article was first used against those who were dismissed with emergency decrees and who were investigated and/or prosecuted for being a FETÖ/PDY member, and that its use was later expanded to lawyers with left-wing affiliations with an aim to increase pressure on dissidents.

All respondents criticised first and foremost the attitude of the bar associations. The respondents emphasised that the bar associations took a negative stance if the dismissal, investigation, or prosecution was FETÖ/PDY related. The bar associations were reported to have said "We are out if it's a FETÖ/PDY case", deliberately not handle such cases and keep their distance. They also allegedly said to people who were barred from practicing on the basis of allegations other than FETÖ/PDY: "If we gave you your licence, we would have to give them [alleged FETÖ/PDY members] their licences too".

Head of the Istanbul Bar Association Mehmet Durakoğlu stated that there was no such discrimination based on different organisations but an assessment was conducted based on the crime type in the context of Article 5.

Head of the Izmir Bar Association Özkan Yücel stated,

“It does not matter whom we are facing, with what charges they are tried, that they are tried for FETÖ charges, for a right-wing organisation. What will happen to the presumption of innocence? If the bar associations do this, how can we discuss the presumption of innocence before any court? ... if the pronouncement of the verdict is suspended, there is no finalised conviction. Bar associations must accept this...”

The first point of criticism was that, assuming the role of the Ministry of Justice and the Prosecutor’s Office, bar associations took the initiative to request information on whether the applicants had an ongoing investigation, prosecution, or a conviction. Obtaining this information often lasted months, hence making these security investigations one of the most important obstacles preventing people from starting their traineeship or their practice as lawyers.

During our interviews with heads of bar associations and representatives from the UTBA, we were informed that the basis for this practice was the UTBA Announcement no. 2016/56 dated 15 August 2016.⁴⁷ With this announcement sent to bar associations, the UTBA demanded “the [application] file to be sent [to the UTBA] after determining whether there are any criminal investigations based on allegations of membership to FETÖ/PDY and whether [the applicant] has been dismissed under Emergency decree no. 667”. This decision was taken after consultations with the Ministry of Justice. The UTBA argued that the reasoning behind such a decision was delays caused when files were rejected and sent back by the Ministry of Justice to the UTBA for a re-assessment. Mehmet Durakoğlu explained that they accepted applications so as not to give way to any unjust treatment. Özkan Yücel criticised the lack of any reaction from the bar associations and the UTBA against this unacceptable practice.

Secondly, the bar associations were criticised for using ongoing investigations and prosecutions or dismissals by emergency decrees as grounds to postpone admission until the end of the investigation and prosecution or as grounds to reject applications, without any concrete, personalised assessment. The fact that admission decisions were often rejected by the Ministry of Justice and later annulled by administrative courts also had a dissuasive effect on some bar associations which refrained from accepting applications.

The procedure is as follows: The decisions of the board of the bar association are submitted to the board of the UTBA for approval. According to Article 8/4 of the Attorneyship Law, the UTBA Board decides whether the bar association’s decision regarding the candidate’s enrolment for the first time or re-admission is “appropriate”. The approved decisions of the UTBA are then submitted to the Ministry of Justice for

47 Union of Turkish Bar Associations, Announcement no. 2016/56, 15 August 2016, <https://www.barobirlik.org.tr/Haberler/duyuru-201656-71379>.

an opinion. The Ministry delivers a negative opinion on those who were dismissed by emergency decrees, regardless of whether they have received a decision of non-prosecution, of acquittal or suspension of the pronouncement of the verdict. These opinions are identical, except for the reasoning part.

Following the opinion of the Ministry of Justice, the competence to take a decision rests again with the UTBA. The UTBA either follows the Ministry's opinion or maintains its earlier decision. In case the UTBA follows the Ministry's negative opinion, the person concerned is unable to start the traineeship or practice as a lawyer.

It is possible to separate the UTBA decisions into two periods. At first, the UTBA withstood the negative opinions of the Ministry of Justice. However, the UTBA later began to deliver decisions in line with the Ministry's opinion. In case files that we have obtained, the UTBA explains that they follow the Ministry's opinion as "the Ministry of Justice brings cases against [their] admission decisions -without exception- and these cases result in final judgments in the Ministry's favour delivered by administrative courts and courts of appeal".

The UTBA Board Member Eyyüp Sabri Çepik also expressed that the UTBA once followed this approach, but they later began to pursue the legal processes to the very end. In a written statement, the UTBA's Legal Office confirmed this practice and explained that they now accept applications from those dismissed if, in relation to FETÖ/PDY allegations, the applicant was acquitted, had a decision of non-prosecution or suspension of the pronouncement of the verdict, or if they was only subject to disciplinary or administrative proceedings.

Indeed, the UTBA began to resist the Ministry of Justice opinions in many cases. The UTBA even attempted to resolve the issue with the Ministry of Justice or the Ombudsman. As positive decisions from the UTBA spread amongst candidate lawyers, a number of initially unsuccessful applicants found the courage to make a second application. The UTBA has accepted most of these second applications, despite the negative opinion of the Ministry of Justice.

That said, the UTBA's initial avoidance in using its right to resist the Ministry of Justice opinions was heavily criticised. The UTBA had justified its actions on the grounds that the admission decisions kept being annulled by administrative courts and that they had to pay a high sum of counsel fees and litigation costs. However, the respondents favourably recognised that the UTBA eventually changed its approach.

In the case files we examined, we observed that the Ministry of Justice often filed a lawsuit very shortly after the UTBA's decision to resist—in certain cases merely hours or a few days later. All examples show that the Ministry of Justice's case petition text was identical to the negative opinion they previously expressed. As these cases are filed against the UTBA, the persons concerned, i.e. the applicant lawyer or trainee, become

aware only via the notification of the case. The case is sometimes notified after the stay of execution has been ordered, hence making it difficult to effectively submit an appeal.

Third, the bar associations were strongly criticised regarding intervention requests. Although it is not a common practice, it is possible for bar associations to become an intervening party to the cases. Most respondents described that they met with heads of bar associations and/or board members, but their requests for intervention were often rejected with one-line decisions. However, heads of Istanbul and Izmir Bar Associations informed us that they intervene in cases upon request. The respondents highlighted the importance of this intervention on two grounds. Firstly, because a decision approved by bar associations and the UTBA is brought into question with the lawsuit filed by the Ministry of Justice. The removal of a trainee or a lawyer from the bar list following a court order, despite being already admitted by the bar association, concerns not only the individual, but also the bar association itself. Secondly, respondents have the impression that, in the few cases that bar associations have intervened, the cases have resulted in their favour.

Although stay orders and annulment decisions are delivered very rapidly, it can be observed that the length of proceedings exceeds a reasonable time, particularly before the court of appeal and the Constitutional Court.

In the next chapter, victim groups and the legal processes, as well as decisions from administrative courts and the Constitutional Court will be examined. Finally, based on the interviews, the social, psychological, and economic ramifications of this process on the respondents will be discussed.

A. Individuals Not Admitted into the Profession of Lawyer and the Legal Processes

It is possible to differentiate between four groups of people who are barred from practicing as a lawyer. (1) Those who are being investigated or prosecuted or those who have received decisions of non-prosecution, suspension of the pronouncement of the verdict or acquittal; (2) those who were dismissed by emergency decrees; (3) Academics for Peace; and (4) those who received disciplinary sanctions due to investigations or prosecutions against them.

Most of those who were dismissed by emergency decrees and Academics for Peace also have investigations and/or prosecutions against them. However, they will be discussed separately, since their admission to the bar is considered contingent on the decision of the State of Emergency Inquiry Commission, even if they receive acquittal decisions.

This chapter will discuss the legal processes and what charges were brought against the participants, with what evidence, and how bar associations, the UTBA, the Mi-

nistry of Justice and administrative courts regarded these as impediments to admission to the profession of lawyer.

1. Investigations and Prosecutions

One of the main reasons why individuals are prevented from practicing as lawyers is investigation and prosecutions which have been initiated against them and which have resulted in decisions of non-prosecution, acquittal, or suspension of the pronouncement of the verdict.

Bar associations sometimes reject traineeship or licence applications due to ongoing investigations and prosecutions. In addition, the UTBA postpones some admission decisions without resisting the negative opinion delivered by the Ministry of Justice. When the UTBA resists the Ministry of Justice opinion, the Ministry files a lawsuit before administrative courts for the annulment of the admission decision.

In eight case files we have received, the bar associations delivered rejection decisions due to investigations and prosecutions. Amongst these cases, the decision of the bar association was overturned by the UTBA in five cases and the UTBA approved the decision of the bar association in two cases. The appeal to the UTBA is pending in one case. Since most of these cases concern people who have also been dismissed by emergency decrees, these will be assessed in the relevant chapter. This chapter will only discuss individuals who were investigated or prosecuted for various reasons.

Most participants who shared their files with us were investigated or prosecuted for their actions which were protected under freedom of expression, assembly, and association. They were charged with membership to a terrorist organisation, terrorist propaganda or for attending demonstrations allegedly violating Law no. 2911 on Assemblies and Demonstrations. The evidence put forward in these case files included possessing magazines and books, attending demonstrations, ceremonies or press statements, for example on 8 March, 1 May or Newroz, shouting slogans, or being a member of certain student organisations.

Two participants, L.K. and H.T.Y., allegedly appeared in videos from demonstrations or in videos deemed to be terrorist propaganda. Despite submitting expert reports to show that they did not bear any resemblance to the persons in the videos, they were nonetheless investigated or prosecuted. In the case of Barış Barışık, among other charges, he was charged with provoking the public to hatred and hostility for putting up posters around the university campus following the Charlie Hebdo attack.

Individuals were also investigated with FETÖ/PDY membership allegations, for working for the daily newspaper *Zaman* or for having a *Bank Asya* bank account. Some had no developments in their investigation files for many years. Nevertheless, these ongoing investigations prevented these individuals from practicing as lawyers.

In certain cases where bar associations approved of admissions, the UTBA did not resist the negative opinion of the Ministry of Justice and decided to postpone the admission decision until the end of the investigations and prosecutions. In eight case files we have received, the UTBA delivered a decision to postpone admission and the cases brought against these UTBA decisions have been all dismissed. Some of these cases are at the appeal stage and some are before the Constitutional Court. In three cases, the candidate lawyers re-applied for admission to the bar and their applications were accepted by the UTBA, but Ministry of Justice filed lawsuits for the annulment of their admission.

In almost all the criminal case files we have received, there were restriction orders for the files preventing access to the evidence and the exact allegations. Some of the investigations remained dormant for numerous years. The prosecutions, similar to the investigations, lasted many years, even as long as over ten years in one case. Already exceeding the reasonable time requirement under Article 6 of the ECHR, it is also uncertain when these proceedings will come to an end.

Another issue of concern is that even when investigations and prosecutions have been concluded, decisions of non-prosecution, suspension of the pronouncement of the verdict or even acquittal were still used as grounds to prevent people from practicing as lawyers. Two participants, F.G. and Participant A, were charged with terrorist propaganda or membership to a terrorist organisation for demonstrations they attended as students and student associations they were members to. Although the pronouncement of the verdict was suspended for both applicants, the Ministry of Justice still filed for the annulment of their admission. The Ministry's stay of execution request was denied by the lower administrative courts but the cases are still pending.

2. Dismissals by Emergency Decrees

One of the most important obstacles preventing people from practicing as lawyers is their dismissal by an emergency decree. Those who were dismissed by emergency decrees encounter the first obstacle in their admission at the traineeship stage. For instance, in the case of Participant B., who is being prosecuted for being a FETÖ/PDY member, the bar association rejected his traineeship application stating that "it could not be accepted during the state of emergency". Although his appeal was accepted by the UTBA on the grounds that he had "no disciplinary sanction", his traineeship application was rejected again after the UTBA changed its decision in accordance with the negative opinion of the Ministry of Justice. The case brought by B. against this UTBA decision is still pending at the appeal stage. Similarly, although E.M.Y. was not under any administrative or criminal investigation as a dismissed teacher, he was unable to continue his traineeship as the administrative court stayed the execution of his traineeship admission.

Some bar associations rejected applications, arguing that their decisions admitting dismissed candidates were accepted neither by the Ministry of Justice nor by administrative courts. One participant, C.Ö., used to be a lawyer registered at the Kayseri Bar Association but was removed from the bar roll after becoming a prosecutor. When he applied for readmission following his acquittal, his application was still denied because he had been dismissed. Tuncay Elarslan was a judge and a member of the YARSAV trade union for judges and prosecutors, when he was dismissed. He was admitted to the bar after the UTBA resisted the Ministry's negative opinion on his file. He was later acquitted for being a FETÖ/PDY member. The admission decision was nonetheless annulled by the administrative court. His application to the Constitutional Court is pending.

In other cases, some of the former prosecutors, judges, academics, police and army officers who were dismissed were admitted to the bar. Yet they were removed from the bar roll upon the stay of execution or annulment decisions in cases filed by the Ministry of Justice. Their removal from the lists were decided regardless of the status of their case. Although some applicants were never charged or were acquitted in the process, this was never taken into consideration by administrative courts. For example, Günel Kurşun was a dismissed academic and was charged with being a FETÖ/PDY member for his articles for *Today's Zaman* or his activities at the Human Rights Agenda Association (*İnsan Hakları Gündemi Derneği*). His admission to the Adana Bar Association was annulled by an administrative court order. Kurşun was notified of this order after he was released from prison in the Büyükada case.⁴⁸

The appeals against some of these administrative court decisions are pending before the Court of Appeal, while decisions which were approved by the Court of Appeal were taken before the Constitutional Court.

3. Academics for Peace

Academics for Peace were signatories of a petition titled "We Will Not Be Party to This Crime", calling for an end to the grave human rights violations in south-eastern Turkey during the curfews in 2015-2016. They were taken into custody, detained, dismissed by emergency decrees; their passports, as well as their spouses' and children's passports were restricted. They were charged with terrorist propaganda and received prison sentences or decisions for the suspension of the pronouncement of the verdict. Their inability to practice as lawyers is amongst these rights violations they encountered. Once they applied to the bar associations, Academics for Peace were either not allowed to start their traineeship or were prevented from practicing by administrative court orders in cases filed by the Ministry of Justice.

48 See Keep the Volume Up for Rights Defenders in Turkey, "Günel Kurşun", <https://www.sessiz-kalma.org/en/defender/gunal-kursun-2/>.

In the *Füsun Üstel and Others* judgment, the Constitutional Court found that the Academics for Peace petition fell under freedom of expression and ruled for retrial and compensation. With decisions of non-prosecution and acquittal following the *Füsun Üstel and Others* judgment, investigations and prosecutions against Academics for Peace could no longer serve as the basis for their inability to register at the bar associations. As the State of Emergency Inquiry Commission has not delivered a single decision regarding Academics for Peace, currently the only obstacle preventing academics from practicing as lawyers is the fact that they were dismissed by emergency decrees.

Cenk Yiğiter and İnci Solak Akman were both academics who were unable to complete their traineeship at the Ankara Bar Association as a result of annulment orders. Both academics applied to higher courts but to no avail. Solak Akman's application is pending before the Constitutional Court and Yiğiter is planning to re-apply to the bar. Another law academic who was dismissed by an emergency decree was K.A. His application was first rejected by the bar association but was accepted by the UTBA upon appeal. However, he was struck off the bar roll after a court order annulled his admission. Following his acquittal K.A. was admitted to the bar again and began to practice as a lawyer. In the case brought by the Ministry of Justice, the administrative court ordered the stay of execution and K.A. was again removed from the bar roll. The case regarding the annulment of his admission is still pending.

Although we specifically contacted a number of Academics for Peace who are law graduates, we were only able to include a few in the report. This is because some did not wish to practice as lawyers, and most were convinced that their applications would be rejected as they had been dismissed and the investigations and prosecutions for terrorist propaganda were ongoing at the time. These academics expressed that they were "tired of trials" and "could not find the psychological and the economic power to pursue a new case to obtain a license". Two academics Barkın Asal and Mehmet Cemil Ozansü were not Academics for Peace but were members of Eğitim-Sen, a left-wing trade union for education and science workers, and were dismissed by emergency decrees. They were "recommended [by the Istanbul Bar Association] not to apply under uncertain circumstances". Another academic Esra Demir Gürsel, currently living in Germany, also faces practical difficulties. Since the restriction on her passport remains in force, she cannot travel to Turkey to apply for a licence, fearing that she will not be able to return to Germany.

4. Disciplinary Sanctions Due to Investigations and Prosecutions

One of the files we have received concerns a lawyer, M.Ş.Ş., who was sanctioned by the Istanbul Bar Association Disciplinary Committee with a one-year suspension. The disciplinary punishment was given following a decision of the suspension of the pronouncement of the verdict for a 1 year 6 months prison sentence for being a mem-

ber of FETÖ/PDY. In its decision the Disciplinary Committee stated that the prison sentence required disbarment but given the suspension of the pronouncement of the verdict, the Committee would use its discretion and give a reduced sentence. Another lawyer who received a similar suspension of the pronouncement of the verdict was given no such disciplinary sanction by the Kocaeli Bar Association. The fact that this practice changes depending on the bar association, on the crime and on the person creates an atmosphere of arbitrariness.

B. Administrative Court Decisions Concerning Individuals Not Admitted to the Profession of Lawyer

In order to exhaust domestic remedies in case traineeship or licence applications are rejected or when the admission decisions are postponed or annulled, cases must be brought before administrative courts. Administrative court judgments which give stereotyped reasons, provide no personalised assessment and which generally follow the Ministry of Justice opinion, are taken before the courts of appeal.

1. Administrative Courts

Cases before the administrative courts often comprise of a stay of execution and annulment request. In 17 cases that we have received, the execution of the decision was stayed by the administrative court. 12 annulment cases were pending. In 15 cases, the admission was annulled and the case was pending before the court of appeal. In two cases, no decision was given yet.

The Ministry of Justice's request for the stay of execution was rejected on eight exceptional occasions by administrative courts which argued that the criteria for a stay of execution order were not met. In five out of eight cases, these decisions were overturned by the court of appeal. Only in two cases the court of appeal decided against the Ministry of Justice. The rest are pending before the court of appeal.

There are two main lines of argument in the administrative court judgments: a) Article 5 of the Attorneyship Law governing impediments to admission into the profession and the postponement of admission in these cases and b) the classification of the profession of lawyer as public service.

a) Article 5 of the Attorneyship Law

Article 5 of the Attorneyship Law regulates impediments to admission into the profession. Article 5/1-a considers "receiving a prison sentence exceeding two years for a crime committed intentionally or conviction for crimes against state security, constitutional order and the operation of this order, embezzlement, malversation, bribery, theft, fraud, counterfeit, misuse of trust, fraudulent bankruptcy, corruption in tenders, fraudulent acts in fulfilment of obligations, laundering assets obtained as a

result of an offence or smuggling” as impediments to admission into the profession. Article 5/3 of the Law states that “In case the candidate is prosecuted for a crime listed under Article 5/1-a, the decision regarding their application may be postponed until the end of this prosecution”.

Article 5 of the Attorneyship Law serves as the domestic legal basis for rejecting or postponing admissions for traineeships or licences. However, it is debatable whether the provision meets the relevant criteria for an interference to be prescribed by law, i.e. precision, accessibility and foreseeability and procedural safeguards against arbitrariness. Notably the text of Article 5/3 and its interpretation by administrative courts and the Ministry of Justice is highly problematic in terms of legal certainty and foreseeability.

We have identified three main problems concerning the interpretation and the application of Article 5. In relation to Article 5/3, these are (i) problems related to the discretionary power of administrative authorities, (ii) the lack of a time limit on the postponement of admissions and (iii) the application of the provision extending to investigations. Another problem is (iv) the application of Article 5/1-a to those who received a suspension of the pronouncement of the verdict. Finally, (v) the constitutionality of Article was discussed and an amendment was suggested.

i. Discretionary power of administrative authorities

Article 5/3 states that the decision to admit a candidate lawyer *may* be postponed until the end of the ongoing prosecution. Here, the bar association is accorded a discretionary power, yet the provision creates problems both due to the letter of the law and its application.

Firstly, the text of the provision does not provide any criteria for the use of this discretionary power, nor does it offer any legal guarantees against arbitrariness.⁴⁹ As a result, bar associations make a decision based on the mere existence of a prosecution and on the crime type. Yet it is not possible for them to discuss the content of the indictment or the seriousness of the accusations. It is possible to apply to administrative courts against the decision of the bar, however the courts would not be capable of making an assessment without first assessing the “the appropriateness of the indictment”.⁵⁰ An effective remedy which can compensate for the loss incurred in the period during which the individual could not practice as a lawyer, does not exist. Therefore, while the provision accords a wide and arbitrary discretion, it does not provide any procedural safeguards against this arbitrariness.

49 Dilşad Çiğdem Sever, “Avukatlığa Engel Suçların ve Avukatlığa Kabulü Bekletme Yetkisinin Anayasallığı Üzerine”, *Anayasa Hukuku Dergisi*, Cilt: 8, Sayı: 16, Yıl: 2019, p. 436.

50 Sever, p. 437.

In addition, even when bar associations decide not to postpone admission, the Ministry of Justice considers this decision inappropriate and sends it back to the UTBA for re-assessment. When the UTBA does not abide by the Ministry's decision, the Ministry files a lawsuit for annulment. Even though the legal provision does not require bar associations to postpone admission until the end of the prosecution, the administrative courts adhere to the opinion of the Ministry and expect bar associations to postpone admissions - almost automatically- in case of prosecutions.

Moreover, administrative courts interpret the scope of this discretion very broadly, even to the extent that it covers investigations. One administrative court ruled that "although there is no explicit provision regarding those who are under an investigation and the authorities are given a discretionary power on this matter, the use of this power is limited to public interest and public service needs, hence open to judicial review".

These administrative court judgments not only contradict with the letter of the law, but also amount to a review of the expediency of the bar's discretionary decision. Neither the Ministry of Justice nor administrative courts have any regard to the autonomy of the bar association as a professional organisation and its authority in admissions into the profession. Therefore, as Article 5/3 provides a wide and arbitrary discretionary power and offers no procedural guarantees, and as the Ministry of Justice and administrative courts interpret the postponement of admission as a requirement, even when bar associations use their discretion appropriately, it would not be possible to consider Article 5/3 of the Attorneyship Law as a foreseeable legal basis.

In the files we examined, while bar associations and the UTBA insist on approving admission to the traineeship or on granting the licence, the Ministry of Justice -an authority that cannot be considered impartial and independent- disregards the UTBA. The Ministry of Justice, by preventing individuals who exercise their freedom of expression, assembly, and association from practicing as lawyers, breaches international principles on the profession of lawyers. It must be recalled that the freedom of expression of lawyers is closely connected to the independence of the profession and that this freedom is necessary for the proper administration of justice.

ii. Indefinite nature of decisions postponing admission

Article 5/3 allows for a decision to postpone admission to remain in force until the end of the prosecution. This indefinite postponement violates the presumption of innocence and amounts to a disproportionate interference with the right to work. Given the excessive length of proceedings in Turkey, these decisions render candidate lawyers incapable of registering at the bar for many years. This situation was exacerbated by delays in proceedings due to the Covid-19 pandemic.

For instance, one of the participants, Evin Kılıç, is being prosecuted since 2014 for being a member of a terrorist organisation for attending a demonstration in 2012. Alt-

though her second licence application was accepted by the bar, she was removed from the bar roll following an administrative court order in the annulment case filed by the Ministry of Justice. Similarly, Mehmet Polat and Barış Barışık are being prosecuted, since 2014 and 2016-2017 respectively, for actions protected under freedom of expression, assembly, and association. The UTBA postponed their admissions until the end of the prosecution. Two UTBA Board Members dissented from the majority opinion arguing that the proceedings had been ongoing for a long time and the consequences of this postponement would be irreparable if the candidates were later acquitted. It is evident from these examples that preventing a lawyer from obtaining their licence during the indefinite and unclear prosecution period constitutes a disproportionate interference.

iii. Application of Article 5/3 in case of investigations

Another problem is caused not by the letter of the law but by its application to investigations. The Ministry of Justice argues that Article 5/3 applies to candidates who are under a criminal investigation, although the law explicitly states that the admission decision may be postponed only in the case of a *prosecution*. The view of the Ministry is also adopted by the administrative courts. The UTBA's objection in the case of S.G., that conditions for admission are *numerus clausus* and cannot be expanded by interpretation, was not given any consideration.

Examples of administrative court judgments we have examined show that the administrative courts adopted several approaches. The courts have either argued that Article 5/3 should be interpreted broadly in a way that also covers investigations, broadly interpreted the concept of "prosecution" contrary to the Penal Code, or without making any reference to the text of the law, decided to stay the execution of the admission decision. These judgments were upheld by courts of appeal. However, one judge dissented in two different cases arguing that "the admission request could not be postponed before the prosecution stage".

By specifically using the term prosecution, the legislator has deliberately left out the investigation stage from the scope of this Article. In this sense, there is no discretionary power conferred on the authorities. However, the administrative courts have been interpreting this provision in explicit contradiction to the letter of the law. The application of this provision to investigations is completely unforeseeable and in cases where individuals had their licence applications postponed due to investigations, the interference cannot be considered as "prescribed by law".

iv. Application of Article 5/1-a to suspension of the pronouncement of the verdict

Although Article 5/1-a considers *conviction* from certain crimes to be an impediment to admission to the profession, the provision is also applied to those who receive

a decision for the suspension of the pronouncement of the verdict. As a result, their licences are annulled by administrative courts. In the cases of F.G. and Participant A, the Ministry of Justice has argued that “*although it is ruled that the suspension of the pronouncement of the verdict does not give rise to any legal consequences ... it is clear that there is technically a final judgment*”. However, according to the well-established case-law of the Court of Cassation and the Constitutional Court, the decision for the suspension of the pronouncement of the verdict provides that, after a probation period of five years, the sentence is lifted with all its legal consequences and the person concerned returns to their legal status prior to the case. This decision does not prevent the person from assuming a position in the public service. Nor does it appear on their criminal record. As stated by the Constitutional Court, “it is not a decision concluding the proceedings with a verdict; it is one of the grounds to dismiss the case, which ends the proceedings”.⁵¹ Therefore, to annul the licences of lawyers who receive decisions for the suspension of the pronouncement of the verdict, based on Article 5/1-a, is against the law.

v. Discussions on the constitutionality of Article 5, demands and suggestions

Despite the problems discussed above, requests for Article 5 to be referred to the Constitutional Court for review have been rejected -without any reasoning- by administrative courts. Similar discussions on the constitutionality of certain provisions of the Attorneyship Law had been previously brought to the Constitutional Court, which decided for their annulment. Part of Article 5/1-a which included “crimes against national security, crimes against state secrets and espionage” as impediments to admission to the profession was annulled for being disproportionate since it created a lifelong deprivation of rights.⁵² The Constitutional Court also annulled Article 5/1-c, which listed “attitude and behaviour inappropriate for the profession of lawyer known by social circles” as an impediment to admission. The Constitutional Court found that the provision was in breach of the principle of legal certainty and highlighted the ambiguity and the subjectivity of the phrase. The Constitutional Court also pointed out the wide discretion awarded to the bar associations and the lack of safeguards against arbitrary interpretations and applications.⁵³ In an older judgment, the Constitutional Court annulled part of a provision which temporarily banned lawyers from practicing if they were prosecuted for certain crimes.⁵⁴

Given the wide discretionary power conferred on the bar associations and the lack of sufficient safeguards, it is debatable whether Article 5/3 respects the principle of

51 Constitutional Court of Turkey, Ali Gürsoy Application, No: 2012/833, 26 March 2013, § 21.

52 AYM, E. 2008/17, K. 2010/44, 25 February 2010.

53 AYM, E. 2012/116, K.2013/32, 28 February 2013.

54 AYM, E. 1984/12, K. 1985/6, 1 March 1985.

legal certainty. Article 5/3 is also arguably incompatible with the presumption of innocence and the right to work since it enables the indefinite postponement of admission based merely on the existence of a prosecution for certain crimes and without any personalised assessment of the applicant's situation. For this reason, it would be advisable that these provisions are referred by administrative courts to the Constitutional Court for a review of their constitutionality.

Some respondents have voiced the demand that Article 5/3 must be partially amended by the National Assembly. Others, such as the Coordination Group against Seized Licences ('The Licence Coordination Group') advocate for its complete removal. Head of the Istanbul Bar Association Durakoğlu revealed that a study for a more liberal amendment of Article 5 was shared with the UTBA. Head of the Izmir Bar Association Özkan Yücel believed that the removal of the Ministry of Justice from the admission process was necessary. Nevertheless, other participants believed that an amendment was not needed, if bar associations and administrative courts applied the provision in line with its text and spirit and if courts stopped bringing charges under counter-terrorism for actions which are protected under freedom of assembly and association.

In our opinion, although certain problems stem from the application of the provision in breach of its own text, some amendments may provide additional safeguards. Article 5/1-a, which includes a list of crimes that are impediments to admission into the profession, should be amended. Considering that dissidents, human rights defenders, journalists, members of parliament, and lawyers are extensively investigated and prosecuted for membership to a terrorist organisation, terrorism propaganda and similar crimes, applications for traineeships and licences should be assessed on a case-by-case basis. Whether the applicant is punished without any substantial evidence and reasoning, because they have exercised their freedom of expression, peaceful assembly, and association should be assessed in light of human rights law jurisprudence and principles. These convictions should not automatically become impediments to admission to the bar and cause a lifelong deprivation of rights. It would also be beneficial if an explicit reference was added to clarify that decisions, which do not constitute a "conviction" or a "verdict", such as the suspension of the pronouncement of the verdict, will not be considered within the scope of this Article. As the complete removal of the Article may cause further legality issues, it would be advisable to limit the application of the provision to prosecutions and make an assessment based on the circumstances of the case.

b) Profession of Lawyer Considered as Public Service

Those dismissed by emergency decrees are prevented from practicing as lawyers based on the emergency decree provision that "those dismissed from their profession or from public service by this emergency decree cannot be employed in public duty anymore".

Article 1 of the Attorneyship Law defines the profession of lawyer as both public service and self-employment. Based on this provision, the Ministry of Justice and administrative courts argue that, since those dismissed cannot be employed in public service, they cannot practice as lawyers either. Whether there is an ongoing investigation or prosecution against the person concerned or the content of judgments delivered in these criminal proceedings are considered irrelevant. Those dismissed are prevented from practicing as lawyers merely on the basis of their dismissal.

Even when bar association and the UTBA approved the applications of candidate lawyers who were dismissed, the files were returned by the Ministry of Justice. The Ministry argued that dismissals were “extraordinary measures which were permanent and conclusive” and that the profession of lawyer constituted public service. The Ministry explained that “considering the importance and the quality of the profession of lawyer, the public service aspect, and the fact that a lawyer functionally performs a public duty, interpreting the provision narrowly ... would go against the aim of the emergency decree and hinder the fight against terrorism”. This view of the Ministry was adopted also by the administrative courts. As administrative courts -without exception- decided in favour of the Ministry, the UTBA began to reject traineeship or licence applications from dismissed candidates. The lawsuits filed by the candidate lawyers against the UTBA were also concluded in favour of the latter.

The UTBA later changed its approach, arguing that the profession of lawyer did not constitute public duty and practicing as a self-employed lawyer could not be considered as “employment in the public sector”. The UTBA then began to resist against the view of the Ministry of Justice and register dismissed lawyers to the bar roll. However, as Ministry of Justice filed lawsuits against their admission to the bar, these lawyers were prevented from practicing by court orders and they were struck off the bar roll.

In fact, the view that the profession of lawyer constitutes “employment in the public service” does not comply with administrative law principles and does not have a basis in the jurisprudence of the Constitutional Court and the Council of State. On the contrary, the high courts draw a distinction between lawyers who work as public servants at public institutions and lawyers who are self-employed and hence are not public servants.⁵⁵

Although it is not possible for a dismissed lawyer to be employed at a public institution, there is no obstacle for them to work as self-employed lawyers. Moreover, while those dismissed are explicitly prevented from working as mediators or court experts,

55 Council of State 8th Chamber, E. 1993/177, K. 1994/306; Constitutional Court of Turkey, Tuğba Arslan Application [GC], No: 2014/256, 25 June 2014, § 19; Constitutional Court of Turkey, E.2010/97, K.2011/173, 22 December 2011; Constitutional Court of Turkey, E.2002/8, K.2003/47, 4 June 2003.

there is no such provision barring them from practicing as lawyers. Just as some of those dismissed were approved by the Supreme Election Council to serve as members of parliament⁵⁶ and dismissed healthcare workers can work at private institutions⁵⁷, dismissed lawyers should also be able to practice their profession.

The UTBA referred to these aforementioned principles before the administrative courts, yet their objections were not taken into account. Indeed, the administrative court judgements rarely followed the Constitutional Court and the Council of State jurisprudence. Only in one example we received, a lawsuit was filed against the UTBA decision to reject the admission of an applicant who was dismissed but who was not investigated or prosecuted. The administrative court ruled that “it was clear that self-employed lawyers were not employed in public service” and that in the absence of a disciplinary punishment, being dismissed could not be considered as an impediment to admission into the profession.

Amongst all the files we received, this was the only judgment delivered in favour of a dismissed candidate lawyer. Only two other dissenting judges at the court of appeal mentioned that the profession of lawyer could not be considered as public service.

2. Courts of Appeal

Administrative court decisions delivered in lawsuits filed by the Ministry of Justice or filed against the UTBA for their decisions to postpone the admission to the bar, are brought before courts of appeal. The 12th Chamber of the Ankara Regional Administrative Court decides on these appeals. We have received examples of 21 stay of execution decisions and 13 annulment decisions in cases filed by the Ministry of Justice, as well as 2 stay of execution decisions and 6 decisions dismissing the case filed against the UTBA which were brought to appeal. In all these cases, with only two exceptions, the judgements delivered were in favour of the Ministry of Justice.

The reasoning in the court of appeal judgments only consists of the following: “as the judgment is compliant with the procedure and the law, there is no reason for it to be overturned”. All judgments we received were unanimous, except for five exceptions. In one case, Judge A argued that the conditions to grant a stay of execution were not met. In two other cases, Judge B dissented from the majority opinion which overturned the lower court’s decision to reject the request for a stay of execution.

The dissenting opinions in two annulment cases is especially noteworthy. In İnci

56 Following the 24 June 2018 elections, a total of ten members of parliament from the Republican People’s Party, People’s Democratic Party and Felicity Party assumed their posts at the Grand National Assembly.

57 See announcement by the Ministry of Health, dated 28 September 2016 and numbered 54567092-045.99.

Solak Akman's case, Judge B argued that self-employed lawyers did not fall under the scope of the emergency decree provision preventing employment in public service and that enrolment on the traineeship list could not be postponed due to investigations, unless these investigations turned into prosecutions.

Another exceptional dissenting opinion was in the case of Şükrü Erkal, a dismissed judge who was later acquitted. Judge A argued that the application of the emergency decree provision to Mr Erkal despite his acquittal would amount to an indefinite removal of his right to enter public service. This was the only case where references were made to international human rights law and constitutional law principles on rights restrictions.

As he stated in our interview, Mr Erkal believed that this dissenting opinion was written due to the intervention of the Ankara Bar Association at the appeal stage. Indeed, this is the first and only example that we encountered where a bar association was granted permission to intervene before a court of appeal.

3. The Council of State

According to Article 46/1-c of the Procedure of Administrative Justice Act, it is possible to take judgments concerning dismissals from a profession before the Council of State for an appeal. Two participants applied to the Council of State with a view to exhaust all domestic remedies available. They argued that the annulment of a bar admission constituted dismissal from a profession, but their appeal was dismissed on the grounds that their situation did not fall under the aforementioned Article and without an appeal from the UTBA as the main party to the case, the applicants as intervening parties were unable to appeal "on their own".

c. The Constitutional Court

Individual applications to the Constitutional Court of Turkey have been accepted as a domestic remedy to be exhausted by the ECtHR since *Hasan Uzun v. Turkey*.⁵⁸ After exhausting the administrative court remedies, 14 participants submitted individual applications to the Constitutional Court between June 2018 and June 2020. Following a request by the Tahir Elçi Human Rights Foundation for statistical information on pending applications concerning admissions to the bar, the Constitutional Court responded: "Applications on this issue have been submitted and are pending assessment. Once the decisions are delivered, they will be made available on the Judgment Database on the Constitutional Court's website."

On 23 July 2020, the Constitutional Court announced that it was due to deliver two judgments regarding the annulment of admissions to the bar. Since the judgments

⁵⁸ Uzun v. Turkey, No. 10755/13, 30 April 2013.

have not been yet been published, we are unable to access the reasoning of the Constitutional Court or further details on the cases. According to a newspaper article, the applicants were Tamer Mahmutođlu, a communications expert who was dismissed from his post at the Information and Communication Technologies Authority and who had no criminal case filed against him; and Mehmet Bayhan, a former prosecutor who was dismissed and later acquitted.⁵⁹ The Constitutional Court ruled that there had been a violation of the right to respect for private life and right to a fair trial when they were barred from practicing as lawyers.⁶⁰

However, in two individual applications we received from participants, the Constitutional Court deemed the applications inadmissible mainly for being manifestly ill-founded. One of the applicants, Bilge Kaan Toptaş, was detained during his traineeship for being a FETÖ/PDY member. He was released following his conviction and was later barred from completing his traineeship. The bar association and the UTBA decided to stay his traineeship on the grounds that his prison sentence was not yet final. After exhausting all administrative court remedies, he applied to the Constitutional Court alleging the violation of the right to fair trial. The Constitutional Court's inadmissibility decision consisted only of one paragraph, stating that it was clear that there was no violation and the application was inadmissible for being manifestly ill-founded. Similarly, the application of Zana Yücel Bozkurt, who was convicted for assisting a criminal organisation based on a secret witness testimony, was deemed partly inadmissible *ratione materiae* and partly inadmissible for being manifestly ill-founded.

An evaluation of the application forms submitted by the two applicants reveals that the Constitutional Court has delivered these inadmissibility decisions without the necessary assessment, given that both application forms have adequately substantiated violation allegations. Nor has the Constitutional Court provided a sufficient reasoning in these inadmissibility decisions.

As will be discussed in further detail, the removal of the applicants from the bar lists may be a violation of their right to property, the right to respect for private life and the right to fair trial. The Constitutional Court's rejection of these applications without adequate regard and reasoning may even violate the right to a reasoned judgment and the right to an effective remedy. The Constitutional Court is also under the obligation to deliver judgments within a reasonable time. Applicants whose applications have exceeded a reasonable time, who have been given decisions of inadmissibility or

59 Cumhuriyet, "KHK'li avukatlar için emsal karar" [Precedent for Dismissed Lawyer], 24 July 2020, <https://www.cumhuriyet.com.tr/haber/khkli-avukatlar-icin-emsal-karar-1753635>.

60 Constitutional Court of Turkey, Agenda of the Grand Chamber and Outcomes, 23 July 2020, <https://www.anayasa.gov.tr/tr/mahkeme-gundemi/genel-kurul/23-July-2020-genel-kurul-gundemi-ve-sonuclari/>.

non-violation, or who have been provided insufficient redress may bring their cases before the ECtHR.

d. Social, Psychological and Economic Effects of Legal Harassment on Individuals Not Admitted to the Profession

To understand the social, psychological, and economic effects of the issue in addition to the legal aspects, we conducted interviews with 12 respondents.

Some respondents explained that they closely followed what their acquaintances went through in a similar situation. They knew they would encounter obstacles in their traineeship or licence applications and hence faced a constant fear of rejection. Some respondents regularly went to the courthouse to check whether an investigation or prosecution was initiated against them. Some respondents explained that they knew, even if they received their licences, that the Ministry of Justice would file a lawsuit and they would be struck off the bar roll. For this reason, they “had to imagine themselves as a person without a licence, a person who could not become a lawyer—if not now, then a year from now”. However, those who had a decision of the suspension of the pronouncement of the verdict had not even expected that their licences would be rejected and found themselves in an unpredicted situation.

Many respondents, such as Barış Barışık, expressed that they found it exhausting to talk about their cases, answer questions on their current status, retell the entire process, and to not be able to respond when asked “What are you doing for work?”. The dismissed academic K.A. stated that he “returned to his professionless situation” after losing his licence.

All respondents emphasised that, even if they could start practicing as a lawyer in the end, the anxiety, the legal process, and the possibility of being struck off the bar roll created “an incredible stress and psychological depression”. All respondents defined this process as “exhausting”, “consuming”, and “stressful”. Some explained that they began to receive psychological treatment or that they fell ill with different diseases.

Yağmur Kavak from the Licence Coordination Group told that their friend had received a 16 year prison sentence, but even though the sentence was not yet finalised, he was sure that he would not be able to get his licence and he was looking for other jobs instead. Dilovan Gümüş, a student in his senior year, wrote that he was not going to be able to practice as a lawyer due to the 3 year and 9 months prison sentence he received, which was now before the Court of Cassation. For this reason, he hesitated to even apply for the traineeship.

One of the respondents explained that, in an environment of increasing unemployment and exploitation, when it was already difficult to find a job as a trainee or a lawyer, it became impossible after losing the title of “lawyer”. Most respondents wor-

ked with their relatives or acquaintances and were unable to find a job for a long time despite their efforts. Yağmur Kavak explained that, to overcome this problem, Progressive Lawyers' Association (ÇHD) decided that their members would employ lawyers who could not find employment elsewhere because they were struck off the bar roll.

The harshest criticism here was directed at the bar associations for not taking the issue seriously and not giving the necessary reaction or support. Some respondents recounted that they did not know or understand what was happening and what might happen, and that despite attempts to reach out to the bar associations, they received no assistance. The respondents' most substantial demand from bar associations was to be informed, for instance with meetings gathering affected lawyers. On the contrary, as revealed by the respondents, once they were struck off the bar roll, they felt that they were left alone and ignored.

Levent Mazlıgüney, a dismissed respondent who was also an engineer, compared the attitude of the bar associations with the Chamber of Construction Engineers, which kept him informed and continued to invite him to events, instead of ostracising him. He also told that many professional organisations and unions offered financial assistance to those who were dismissed, but the bar associations offered no such support.

İnci Solak Akman appreciated the support that bar associations showed for public events recently but believed that they were late in their reaction, both in relation to the licence problems and the proposed law changing the structure of the bar associations. Referring to Academics for Peace and hundreds of young law school graduates who are being prosecuted for attending demonstrations as students, she said that bar associations should have spoken louder.

Similarly, centres at bar associations, such as the Human Rights Centre, Lawyer's Rights Centre, and Young Lawyers Centre, were criticised for responding "in a slogan-like manner" that they would investigate the issue and then giving no response. Abdullah Bişaroğlu from the Licence Coordination Group also mentioned that these centres used bureaucratic mechanisms to avoid assuming responsibility.

As for the Grand National Assembly, respondents were certain that the parliamentary inquiries would be left unanswered. They also believed that, except for a few members of parliament like Ömer Faruk Gergerlioğlu, İbrahim Kaboğlu and Sezgin Tanrıkulu, there was no effort at the parliament level.

Civil society organisations and lawyers' organisations were also criticised for not providing sufficient support, but unlike bar associations, they were not considered to have the primary responsibility. Many respondents also believed that, "in a country like Turkey where grave human rights violations took place every day", it was difficult for annulled licences to get a place on civil society organisations' agendas.

Given the importance of public pressure and the indifference of professional organisations, the Coordination Group against Seized Licences was established to bring

together people and to share information and experiences. The group was supported by many lawyers' organisations. Most respondents had heard of the Coordination Group but did not actively participate in its activities. F.G. believed that the solidarity network should have been established under the bar association, allowing more people to participate without hesitation. Finally, respondents affiliated with the Coordination Group criticised the lawyers' organisations for not spending enough time and effort on this issue.

All respondents told that their families supported them throughout this period, but some were more hesitant to share information about ongoing cases with their families. Those who were dismissed by emergency decrees and were accused of being FETÖ/PDY members remained more distant to their relatives and friends. Upon the insistence of their families, some respondents had to return to their family home. Respondents who had left their hometowns to study elsewhere experienced the impact of this return, as well the negative economic and psychological effects of uncertainty.

The impact of this period on women must be especially mentioned. Almost all the female respondents put emphasis on the state of mind created by the loss of economic independence and the return to the family home after establishing a life of their own in other cities. Most women expressed that they were at a disadvantage compared to men. They said that men could find jobs at law firms or in other areas (like bartending, waiting tables) more easily and that none of the men around them had to return back to their family home due to economic and social reasons. Without doubt, gender roles played a part in this. As a woman who worked and had her economic independence before she was dismissed, İnci Solak Akman recounted that "not having an economic independence was existentially difficult" and that "the society at large had the idea that her husband could take care of her".

These decisions that aim to render dissidents defenceless in the long term also prevented women from participating in political causes. Evin Kılıç described that she was removed not only from her social circles but also from her professional practice:

"This is a punishment policy and takes the person away from their environment. ... The first hearing I attended in my four-five months of practice was a femicide trial. I was there at the defence bench. They also removed me from there. I was working on rights violations in prisons, they removed me from there as well. They put me in a field where I certainly did not want to be in, now I am right in the middle of it."

Preventing these individuals, who have been wearied by legal harassment, from entering into the profession of lawyer leads them to a conflict. Especially young graduates experience difficulties and feel a serious sense of uncertainty and anxiety concerning the future. The fact that this issue is not sufficiently brought to the attention of the public and does not receive the necessary support, makes these individuals feel even more lonely.

III. AN ASSESMENT IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL GUARANTEES REGARDING ADMISSION TO THE PROFESSION OF LAWYER

Lawyers and their profession are under increasing pressure not only in Turkey, but across Europe, and these interferences violate numerous rights and freedoms guaranteed under the Constitution and the ECHR. As a result, international institutions and human rights organisations, such as the Council of Europe, the United Nations ('UN') or Amnesty International and Human Rights Watch, increasingly produce reports which documents these pressures, as well as resolutions and recommendations to bring these pressures to an end and to ensure that the profession of lawyer is performed independently. This chapter will discuss such international principles, guarantees and the ECtHR jurisprudence regarding the profession of lawyer.

A. Principles and Recommendations Regarding the Profession of Lawyer and Admission to the Profession in International Documents

As one of the pillars of the judicial system, the importance of the role of lawyers for the functioning of the rule of law, fair trial, and the protection of human rights, has been outlined in numerous international documents and court judgments. The pressure against lawyers, which is heavily criticised, is taken into consideration together with the interferences against human rights defenders increasing in number and intensifying in force in recent years. Bearing in mind the pressure faced by lawyers as human rights defenders and the harassment, threats, and attacks against lawyers, the Parliamentary Assembly of the Council of Europe has expressed the need for a binding international document. As a result, the Recommendation for the case for drafting a European convention on the profession of lawyer was adopted in January 2018.⁶¹

61 Parliamentary Assembly of the Council of Europe, Recommendation 2121 (2018), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24466&lang=en>

Alongside a binding international convention, the Recommendation also envisages the establishment of “an early-warning mechanism” to prevent violations. The Explanatory Memorandum to the Recommendation has specifically drawn attention to the situation of lawyers in Turkey, Russia, Azerbaijan, and Ukraine and has noted that recalling these examples are important “in order to underline the urgency of enhancing protection of the profession of lawyer at European level”.⁶²

The European Convention on the Profession of Lawyer will draw upon the two fundamental international documents, the UN Basic Principles on the Role of Lawyers (Havana Principles) adopted in 1990 and Recommendation No. R(2000)21 of the Committee of Ministers to the Member States on the freedom of exercise of the profession of lawyer dated 25 October 2000. These documents outline the principles concerning the profession of lawyer and although not binding in nature, they are accepted as guiding principles for State obligations.

Both documents set forth the right to access to lawyers and to legal aid, lawyers’ duties towards their clients, certain safeguards for lawyers while they exercise their profession and the rights of lawyers. Both documents state that lawyers must be able to perform their professional functions without harassment, pressure, threats, sanctions, and other interferences⁶³ and that necessary measures must be taken to ensure this⁶⁴. It has been also emphasised that lawyers enjoy freedom of expression, belief, assembly and association and they have the right to join public discussions, notably on matters concerning the law and the administration of justice.⁶⁵ Both documents also express that the professional organisation of lawyers must be “self-governing”.⁶⁶

In this context, the Committee of Ministers Recommendation envisages that “decisions concerning the authorisation to practice as a lawyer or to accede to this profession, should be taken by an independent body” and that “such decisions, (...) should be

62 Parliamentary Assembly of the Council of Europe, “Explanatory memorandum for the case for drafting a European convention on the profession of lawyer”, Doc. 14453, 15 December 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24296&lang=en>.

63 United Nations Basic Principles on the Role of Lawyers (Havana Principles), <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>, § 16; Recommendation No. R(2000)21 of the Committee of Ministers to the Member States on the freedom of exercise of the profession of lawyer, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8#-globalcontainer, Principle 1.4.

64 Council of Europe Committee of Ministers Recommendation (2000) 21, Principle 1.1.

65 Council of Europe Committee of Ministers Recommendation (2000) 21, Principle 1.3; United Nations Basic Principles on the Role of Lawyers, § 23.

66 United Nations Basic Principles on the Role of Lawyers, § 24; Council of Europe Committee of Ministers Recommendation (2000) 21, Principle 5.2.

subject to a review by an independent and impartial judicial authority”.⁶⁷ As a complementary principle, it is stipulated that “legal education, entry into and continued exercise of the legal profession should not be denied” based on grounds of discrimination.⁶⁸ “Political or other opinion” is especially mentioned amongst these grounds.

Rejection from the bar, disciplinary proceedings, annulment of licences and disbarment are measures resorted to prevent lawyers, notably those who are human rights defenders, from adequately performing their duties. Taken together with other pressures and obstacles such as arrest, detention, physical violence, and harassment, this situation is also severely criticised. For instance, by submitting a third-party intervention to the *Bagirov v. Azerbaijan* application on the disbarment of a human rights defender, the Council of Europe Commissioner for Human Rights has signalled that they are especially concerned with this matter.⁶⁹ The Commissioner has expressed that “the disbarment of the applicant should not be viewed in isolation but as part of a broader pattern of intimidation of human rights lawyers in Azerbaijan”.⁷⁰

The findings of the Commissioner are not limited to the Azerbaijani example. UN Special Rapporteurs on the Independence of Judges and Lawyers Mónica Pinto and Diego García-Sayán have also highlighted that lawyers who are deemed problematic are prevented from entering the profession or they have their licences withdrawn arbitrarily. While “mandatory registration with the bar association is fully consistent with international standards”, this requirement “should not lead to a situation where qualified legal practitioners are denied equal and effective access to the bar”. For instance the mandatory registration in Azerbaijan “allegedly resulted in arbitrary exclusion from the bar of the most “problematic” candidates — for example, lawyers who had previously worked with human rights non-governmental organizations or represented political opponents”.⁷¹ According to the Special Rapporteurs, admission to the profession should not be “granted according to criteria other than knowledge, training and technical competence”⁷² and

67 Council of Europe Committee of Ministers Recommendation (2000) 21, Principle 1.2.

68 Council of Europe Committee of Ministers Recommendation (2000) 21, Principle 2.1.

69 See, for example, Council of Europe Commissioner for Human Rights, “*Third party intervention by the Council of Europe Commissioner for Human Rights-Application No. 28198/15 Bagirov v. Azerbaijan*”, <https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/16806da74c>, § 24.

70 Council of Europe Commissioner for Human Rights, “*Third party intervention by the Council of Europe Commissioner for Human Rights-Application No. 28198/15 Bagirov v. Azerbaijan*”, § 43.

71 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/73/365, 5 September 2018, <https://undocs.org/A/73/365>, § 61.

72 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/73/365, § 54.

“States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such admission processes”.⁷³

Despite this, many lawyers are being targeted with punishments such as suspension of duty or disbarment. It was underlined that “disciplinary proceedings may represent a powerful weapon in the hands of Governments to interfere with the professional activities of lawyers, in particular those dealing with cases against the State or representing causes or clients that are unpopular with the existing regime”.⁷⁴ Disbarment is the heaviest of such disciplinary measures. According to Special Rapporteur Pinto, “Such threats may be aimed at undermining the independence of a lawyer, at intimidating a lawyer to prevent the discharge of professional duties or at carrying out an act of reprisal for activities a lawyer may have carried out in the legitimate exercise of his or her professional responsibilities.”⁷⁵ For this reason, “disbarment should only be imposed in the most serious cases of misconduct (...) and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer”.⁷⁶ Special Rapporteur García-Sayán has stated that “no licences should be withdrawn without the prior consent of the relevant lawyers’ association, and any formal decision should be subject to judicial review”.⁷⁷ It is also important for provisions regulating punitive measures to be “clear and transparent” in order “to minimize the risk of arbitrary disbarments or disciplinary action against lawyers”.⁷⁸

For entry into the profession to be compliant with international principles and obligations, it is of utmost significance that bar associations operate independently and autonomously. Lawyers who are not under the protection of an independent bar association become particularly vulnerable to attacks.⁷⁹ In places where bar associations are under the control of the State, threats such as disciplinary sanction, disbarment or annulment of licences come from the bar associations themselves, although their

73 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/71/348, 22 August 2016, <https://undocs.org/A/71/348>, § 77.

74 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/73/365, § 71.

75 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyer, A/71/348, § 96.

76 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyer, A/71/348, § 96.

77 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/73/365, § 60.

78 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/73/365, § 69.

79 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/71/348, § 87.

primary function is to protect the lawyers.⁸⁰ For this reason, Special Rapporteur Pinto has stated that “silencing and/or controlling bar associations not only poses great risks to the legal community, but also has far-reaching consequences as it erodes the rule of law and the ability of ordinary people to defend their human rights.”⁸¹

Without doubt, these international principles and assessments are of great importance in the context of Turkey. Withheld licences have been an issue of criticism in international reports, discussed alongside with rights violations stemming from dismissals in the post-state of emergency period and with pressures and legal harassment directed at lawyers in Turkey.⁸²

In her Report Following Her Visit to Turkey from 1 to 5 July 2019, Council of Europe Commissioner for Human Rights Dunja Mijatović has specifically referred to the situation of lawyers in Turkey and has stated the following:

“The Commissioner was also made aware of a number of practical obstacles to practicing as a lawyer. ... persons who are dismissed under emergency decrees are automatically barred from exercising as lawyers. She understands that appeals against specific administrative acts to that effect are routinely rejected by administrative courts. The Commissioner was also informed that trainee lawyers are prevented from registering with bar associations and exercising as a lawyer if there are criminal investigations against them even in the absence of any conviction, contrary to the principle of presumption of innocence.”⁸³

The Commissioner has also noted the inability to practice as a lawyer as one of the “automatic sanctions” of the dismissals.⁸⁴ The European Commission has also mentioned lawyers who are unable to obtain their licences in the 2019 Turkey Report, which has drawn attention to the fact that “[l]aw officials (judges, prosecutors and other civil servants) suspended from the civil service by state of emergency decrees are barred from acting as lawyers, since the Ministry of Justice’s appeals against their licences have so far always been accepted by the judiciary”⁸⁵

80 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/71/348, § 87.

81 Report of the United Nations Special Rapporteurs on the Independence of Judges and Lawyers, A/71/348, § 87.

82 See, for example, Amnesty International, “No End In Sight: Purged Public Sector Workers Denied A Future In Turkey”, 2017, <https://www.amnesty.org/download/Documents/EU-R4462722017ENGLISH.PDF>, p. 13.

83 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, <https://rm.coe.int/090000168099823e>, § 176.

84 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, § 87.

85 European Commission, “2019 Turkey Report”, 29 May 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>, p. 39.

In conclusion, preventing individuals from enrolling on a traineeship or from obtaining their licence has become a tool for pressure and a sanction on lawyers, who also face legal harassment. This is in clear breach of principles which envision that lawyers should perform their duties without any interference. The fact that withheld licences affect almost exclusively lawyers who are not deemed “desirable” by the Government, indicates that these measures are part of a systematic policy of pressure. In particular, leaving out dissident lawyers goes against the requirement that an equal, fair, non-discriminatory, and independent assessment must be conducted in admission to the profession, and that objective criteria must be considered. Furthermore, in many case files, lawyers are not accepted for the traineeship or are being denied their licences as a result of investigations and prosecutions which notably violate freedom of expression or assembly. Therefore, these rejections from the bar in themselves violate the rights of lawyers. Finally, the emphasis on the self-governing nature of bar associations is especially crucial for the Turkish context considering that, despite being legally autonomous, bar associations face investigations, prosecutions, and pressure from the executive.

B. Rights Violations Caused by Preventing Entry into the Profession, According to the Jurisprudence of the European Court of Human Rights

Discussed also under the chapter on the social, psychological, and economic effects of this situation, the interferences related to admissions to the profession can be grouped under the right to fair trial, the right to respect for private and family life, the freedom of expression, the freedom of assembly and association, the right to property and the limitation on use of restrictions on rights.

The legal basis for interferences regarding licences is Article 5 of the Attorneyship Law. Whether this law satisfies the requirement of legality by the standards of the ECtHR has been discussed above. Based on this law, the Ministry of Justice, the administrative courts, and the courts of appeal have justified barring from the profession those who were dismissed or those who are investigated or prosecuted. The ECtHR has accepted that the interference with the regulation of the profession of lawyer, which bears obligations towards society and ensures the good administration of justice, pursues the legitimate aim of “prevention of disorder”.⁸⁶ Below we will discuss whether the interferences were necessary in a democratic society and proportionate, whether national courts provided relevant and adequate reasoning and, based on the information available, whether these rights and freedoms have been violated.

86 Jankauskas v. Lithuania (no. 2), No. 50446/09, 27 June 2017, § 73; Lekavičienė v. Lithuania, No. 48427/09, 27 June 2017, § 50; Namazov v. Azerbaijan, No. 74354/13, 30 January 2020, § 44; Bagirov v. Azerbaijan, No. 81024/12, 28198/15, 25 June 2020, § 97.

1. Violation of the Right to Fair Trial

The right to fair trial is governed under Article 6 of the ECHR. The ECtHR considers disputes related to licences governing professional activities admissible under the civil limb of Article 6. For this reason, requests for bar admissions and the rejection of such requests, as well as proceedings before the bar and administrative or civil courts are covered by the procedural guarantees of Article 6.

That said, not all disciplinary proceedings benefit from the protection of Article 6. Only disciplinary proceedings which *affect the right to continue to exercise a profession* are considered under the scope of this article. According to the ECtHR, Article 6 covers not only proceedings which have resulted in temporary suspensions or disbarments, but also those which bear the *risk* of suspension.⁸⁷ The ECtHR has found violations of Article 6 in numerous cases dealing with disciplinary proceedings or re-admission to the bar.⁸⁸ These judgments have assessed especially whether the proceedings had been fair as a whole. In this regard, the ECtHR has also emphasised the importance of procedural safeguards and has noted that “[t]heir inadequacy is of especial importance in view of the seriousness of what is at stake when a disbarred avocat seeks restoration to the roll”.⁸⁹

Below we discuss the numerous procedural shortcomings we encountered in the case files we received.

a) Right to Access to a Court

The right to access to a court is pertinent especially with regards to third-party interventions to the administrative court proceedings concerning admissions to the bar. The individuals, whose traineeship admissions or licences risk annulment, are not party to the lawsuit filed by the Ministry of Justice against the UTBA. Therefore, they must submit a request to intervene to become part of the proceedings. Although requests for intervention are generally accepted by the courts, it is noteworthy that the Ministry of Justice expresses the view that “it would not be appropriate for the person to intervene alongside the defendant”.

87 W.R. v. Austria, No. 26602/95, 21 December 1999, § 30.

88 H. v. Belgium, No. 8950/80, 30 November 1987; De Moor v. Belgium, No. 16997/90, 23 June 1994; Buzescu v. Romania, 61302/00, 24 May 2005; Aslan Ismayilov v. Azerbaijan, No. 18498/15, 12 March 2020. For a case found admissible but not separately assessed under Article 6, see Hajibeyli and Aliyev v. Azerbaijan, No. 6477/08 and 10414/08, 19 April 2018. For a pending case communicated to the Government, see Mammadov v. Azerbaijan, No. 43327/14, Communicated on 3 September 2013. For more information on cases concerning Azerbaijani human rights lawyers who have been disbarred, suspended or criminally prosecuted, see <https://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers/>.

89 H. v. Belgium, No. 8950/80, 30 November 1987, § 53.

In certain cases, the notification of the case took place only after the injunction decision was delivered. In this case, the person whose right is at stake could not effectively intervene in the case and submit their objections to the court. Furthermore, the affected individuals could only act as a third-party intervener (*feri müdahil*), hence they were unable to object to procedural acts carried out before their intervention.

In *Menemen Minibüsçüleri Odası v. Turkey*, the applicant was notified of the case only after the administrative court delivered its decision concerning the annulment of their transportation licence and could intervene in the case only at the Council of State stage. As a result, the ECtHR found that “the failure by the domestic courts to comply with the procedural requirement of Article 31 of the Code of Administrative Procedure prevented the applicant from being heard in a dispute directly affecting her rights and obligations”.⁹⁰ Therefore, the lack of or a delay in the notification of a case concerning the annulment of admission to the bar could constitute a violation of the right to access to a court.

b) Right to a Reasoned Judgment

The right to a reasoned judgment requires courts, which have a discretionary power in assessing the evidence and arguments before them, to justify their decisions. For the proceedings to be fair, the courts must not merely quote the relevant domestic legislation, but also provide a detailed reasoning and must deliver their decision after a thorough assessment of all claims and arguments which might affect the outcome of the case. However, the administrative court decisions concerning traineeship and licence applications only refer to the requests and objections of the Ministry of Justice and provide stereotyped reasonings. Moreover, as noted also by the Commissioner for Human Rights, courts of appeal routinely reject the appeals of applicant lawyers and the UTBA⁹¹ on the grounds that “as the judgment is compliant with the procedure and the law, there is no reason for it to be overturned”.

c) Reasonable Time Principle in Length of Proceedings

The ECtHR has underlined the importance of reasonableness of the length of proceedings when the right to enter into or continue to perform a profession is at stake. In *Silc v. Slovenia*, a case concerning the applicant’s admission to the bar, the Court disagreed with the Government that “this was a case of little importance”. The Court then argued that “Cases involving a right to practice a profession must be considered as urgent as any other employment-related dispute” and that “disputes concerning licence to practice a profession must be decided promptly regardless of whether or not

90 *Menemen Minibüsçüleri Odası v. Turkey*, No: 44088/04, 9 December 2008, § 27.

91 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, <https://rm.coe.int/090000168099823e>, § 176.

the outcome of the proceedings may be favourable to the applicant”.⁹² In numerous cases, the ECtHR found that the length of proceedings before disciplinary committees of bar associations and administrative courts, ranging from three years and one month to nine years and eleven months, exceeded a reasonable time.⁹³

The ECtHR also takes into consideration proceedings before the Constitutional Courts when assessing the reasonableness of the length of proceedings, notably if their decision might have an impact on the outcome of the case.⁹⁴ According to the Court, Constitutional Courts are not required to consider cases based on a chronological order but may prioritise certain cases based on criteria “such as the nature of a case and its importance in political and social terms”.⁹⁵ As a result, the Court takes into account the applicant’s situation, the significance of the judgment for the applicant, as well as whether the case was prioritised, when assessing the reasonableness of the length of proceedings.⁹⁶ A heavy caseload also does not justify proceedings exceeding a reasonable time.

Amongst the examples we examined, the first application to the Constitutional Court was submitted on June 2018. Taking into account the number of cases, the workload and the length of proceedings, a two-year period may be considered reasonable.⁹⁷

Since dismissals, investigations or prosecutions are presented as reasons why applicants were not admitted to the traineeship or were denied their licences, the Constitutional Court will have to make a case-by-case assessment. However, the applicants’ inability to practice as lawyers because they have exercised their freedom of expression, assembly or association constitutes “civil death” in the social, political, and economic sense. Therefore, a judgment by the Constitutional Court is of great importance for the applicants as the binding nature of the judgements require lower courts to remedy the violation once a judgment is forwarded to them. Such a judgment will thereby render it possible for applicants to start their traineeship or to obtain their licences. Given the nature of these applications and their significance for the direct and potential victims, it is essential that the Constitutional Court makes a prioritisation and swiftly delivers its decisions.

92 *Silc v. Slovenia*, No. 45936/99, 29 June 2006, § 33.

93 *Malek v. Austria*, No. 60553/00, 12 June 2003; *W.R. v. Austria*, No. 26602/95, 21 December 1999; *Silc v. Slovenia*, No. 45936/99, 29 June 2006; *Müller-Hartburg v. Austria*, No. 47195/06, 19 February 2013; *Gorjany v. Austria*, No. 31356/04, 10 December 2009.

94 *Deumeland v. Germany*, No. 9384/81, 29 May 1986, § 77; *Poiss v. Austria*, No. 9816/82, 23 April 1987, § 52; *Ruiz Mateos v. Spain*, No. 12952/87, 23 June 1993, § 35; *Oršuš and Others v. Croatia [GC]*, No. 15766/03, 16 March 2010 § 107; *Süßmann v. Germany [GC]*, § 39.

95 *Süßmann v. Germany [GC]*, §§ 56-58; *Oršuš and Others v. Croatia [GC]*, § 109; *Olujic v. Croatia*, No. 22330/05, 5 February 2009, § 90.

96 *Süßmann v. Germany [GC]*, §§ 60-62.

97 The ECtHR did not find a violation for a period of 2 years 9 months in *Gast and Popp v. Germany*, No. 29357/95, 25 February 2000, § 82.

d) Presumption of Innocence

The presumption of innocence is an important aspect of the right to fair trial. The principle applies at all stages of the criminal proceedings, to the person who is accused but has not received a final conviction. The use of incriminating statements notably by judicial authorities and public officials may violate the presumption of innocence.⁹⁸

Different rules and standards of proof apply to criminal and disciplinary proceedings. As a result, it is not a violation of the presumption of innocence per se, if a person who is given an acquittal decision or a suspension of the pronouncement of the verdict is subject to a disciplinary measure. When assessing whether the presumption of innocence was violated, the Constitutional Court of Turkey considers whether the suspension of the pronouncement of the verdict decision was relied on as the sole basis for the disciplinary measure. The Constitutional Court does not find a violation if a separate assessment of facts and evidence was conducted by the disciplinary committee or the administrative courts.⁹⁹

One of the participants, M.Ş.Ş., was charged with being a member of FETÖ/PDY and received a suspension of the pronouncement of the verdict. Based on this decision, the Istanbul Bar Association temporarily disbarred her for one-year. However, another lawyer, who was in a similar situation and was registered with the Kocaeli Bar Association, was not given such a sanction. It is evident that this practice, which varies across bar associations, not only has a contentious legal basis, but it also lacks legal clarity and foreseeability. In addition, the Istanbul Bar Association relies exclusively on the suspension of the pronouncement of the verdict decision and does not make a case-based assessment, which violates the presumption of innocence.

It is also disputable to what extent the discretionary powers conferred on bar associations by Article 5/3 of the Attorneyship Law to postpone admissions based on ongoing prosecutions are compatible with the presumption of innocence.

Lawyers who are already registered with the bar and face suspension during an ongoing prosecution, may submit evidence to the disciplinary committee and it is mandatory that they are heard by the committee before a suspension decision is delivered.¹⁰⁰ However, in files sent back by the Ministry of Justice, bar associations postpone admissions based on the mere existence of an ongoing prosecution and, as far as we have observed, do not make a personalised assessment. No procedural safeguards are present; the applicant lawyer does not have the opportunity to submit evidence or

98 European Court of Human Rights, European Convention on Human Rights Article 6 Guide, § 339 (Last updated: 30 April 2020), §§ 334-353.

99 See, for example, Constitutional Court of Turkey, Mahmut Acerce Application, No: 2015/19048, 24 May 2018, § 39; Constitutional Court of Turkey, D.E. Application, No: 2014/11453, 9 January 2019, § 42-44.

100 Article 153 of Attorneyship Law.

be heard before a committee. As a result, a candidate lawyer's admission is postponed as an administrative measure, although they have not been convicted. This is hardly compatible with the presumption of innocence.

The situation is similar in relation to those who were dismissed with emergency decrees and yet have no conviction. The Ministry of Justice and the administrative courts consider that a dismissal in itself is an obstacle for entry to the profession of lawyer. This is the case even when candidate lawyers receive decisions of non-prosecution, suspension of the pronouncement of the verdict or acquittal.

In their petitions, the UTBA has expressed that acquittal or non-prosecution decisions render the dismissals baseless as they establish that no connection was found between the accused and the terrorist organisation. The UTBA believes that, in this case, the person concerned should be able to register with the bar association. The UTBA also underlines that it is the administrative courts which interpret the law differently and prevent people from practicing as lawyers.

The UTBA's objections are disregarded by administrative courts. Even some of the bar associations have referred to this established administrative court practice when rejecting applications. C.Ö., a former prosecutor dismissed by an emergency decree, was denied his licence despite being acquitted. Similarly, Levent Mazılğüney, a dismissed Air Force member who received a decision of non-prosecution, and many Academics for Peace who were dismissed and later acquitted following the Constitutional Court judgment, were unable to obtain their licences. In the case of one academic, K.A., the administrative court stayed the execution of his admission, stating that "even though an acquittal decision was delivered, the State of Emergency Inquiry Commission is yet to deliver its decision". Şükrü Erkal, a dismissed judge who was later acquitted of being a FETÖ/PDY member, was admitted to the Ankara Bar Association but his admission was annulled by the administrative court. However, a judge dissented from the majority opinion, arguing that "in light of the acquittal decision, a ban from public service would constitute an indefinite deprivation of a right" and that the annulment of the admission decision was unlawful.

2. Violation of the Right to Respect for Private and Family Life

ECtHR considers exclusion from the list of trainee advocates¹⁰¹, refusal of acceptance to the bar association¹⁰² and disbarment¹⁰³ as interferences with the right to respect for private life under Article 8, given their impact on an individual's professional and private life.

101 Jankauskas v. Lithuania (no. 2), §§ 69-70.

102 Lekavičienė v. Lithuania, §§ 46-47.

103 Namazov v. Azerbaijan, § 34; Bagirov v. Azerbaijan, § 87.

According to the Court, an investigation or prosecution may have consequences on the life of the person accused. However, such consequences are “compatible with Article 8 of the Convention provided that they do not exceed the normal and inevitable consequences of such a situation”.¹⁰⁴ The Court also underlines that “Such an interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a ‘pressing social need’ and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’”.¹⁰⁵

The Court has drawn attention to the Committee of Ministers Recommendation on the freedom of exercise of the profession of lawyer, which stipulates that the principle of proportionality must be taken into consideration for all disciplinary sanctions against lawyers. The Special Rapporteur of the Human Rights Council on the independence of judges and lawyers has also underlined that “disbarment should only be imposed in the most serious cases of misconduct ... and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”¹⁰⁶

Following an assessment in light of these principles and based on the files we received, it is possible to say that the reasonings of domestic courts barring applicants from practicing as lawyers are neither relevant nor sufficient. It is also evident that the entire process is devoid of procedural safeguards and decisions lack reasoning and personalised assessments. These sanctions are also not proportionate to the legitimate aim pursued, given the fact that preventing an individual from enrolling on the list of trainee advocates or striking a lawyer off the bar list because they have exercised their freedom of expression, assembly or association, is the heaviest of sanctions.¹⁰⁷

The situation concerning individuals who were dismissed by emergency decrees is of special importance. These individuals are banned from working in the public sector, are unable to find a job in the private sector because they have been “blacklisted” and cannot go abroad as their passports are restricted. Preventing them from practicing as lawyers amounts to civil death¹⁰⁸ and constitutes an interference with their right to respect for private life.¹⁰⁹

What must be taken into consideration is the nature of the allegations, the evidence, and the reasoning why these are deemed as obstacles for entry into the profession of lawyer.¹¹⁰ For instance, in *Döring v. Germany*, the ECtHR dealt with the disbarment

104 *Jankauskas v. Lithuania*, § 76; *Lekavičienė v. Lithuania*, § 53.

105 *Bagirov v. Azerbaijan*, § 98.

106 *Bagirov v. Azerbaijan*, § 41.

107 See also *Namazov v. Azerbaijan*, § 52; *Bagirov v. Azerbaijan*, §§ 93 and 104.

108 See also *Osman Murat Ülke v. Turkey*, No. 39437/98, 24 January 2006, §§ 59-64.

109 See, for example, *Jankauskas v. Lithuania*, § 69.

110 *Döring v. Germany*, No. 37595/97, 9 November 1999.

of an applicant on the grounds that he had violated the principles of humanity and the rule of law while acting as a judge in the German Democratic Republic. The Court took into consideration the exceptional circumstances of German unification and held that domestic courts had carefully examined the accusations, hence finding the application manifestly ill-founded. In contrast, in *Polyakh and Other v. Ukraine*, the Court found that the dismissal of applicants by lustration laws had violated Article 8. The Court held that the applicants were never alleged to have acted in misconduct themselves and were only dismissed for being in civil service during a certain period.¹¹¹

Most of the participants have been given decisions of non-prosecution, suspension of the pronouncement of the verdict, and acquittal. It appears that they will not be able to practice as lawyers unless they are reinstated by the State of Emergency Inquiry Commission. That said, although its reasoning remains unclear as of 31 August 2020, the Constitutional Court judgment dated 23 July 2020 may pave the way for a change.

The ECtHR also takes into consideration the duration during which a lawyer was not enrolled on and/or was removed from the bar list. Therefore, a lifelong ban on entry into the profession of lawyer may violate Article 8.¹¹² According to the Court, the reasons put forward to prevent an individual from practicing as a lawyer may lose their weight over time, the individual may show that they have changed, the punishment may expire or the individual may be acquitted. In this case, the individual concerned should be able to re-apply and have their situation re-assessed. For this reason, even though an individual might be dismissed or convicted, the fact that they are automatically made subject to such a lifelong “measure”, without the possibility of any review, may violate the Convention.

3. Violation of the Freedom of Expression, Assembly and Association

The investigation and prosecutions which were given as reasons why most participants were unable to register as trainees or lawyers with the bar, relate to their exercise of freedom for expression, assembly, or association. These investigation and prosecutions often date back to their university years and have been ongoing for a long period, exceeding a reasonable time. Most investigations and prosecutions concern protests, slogans, banners, and funerals. This is despite the well-established case-law of the Constitutional Court and the ECtHR that peaceful political expressions and actions which do not incite to violence or armed resistance deserve a broader protection and are protected under the Convention.¹¹³

111 *Polyakh and Others v. Ukraine*, No. 8812/15, 53217/16, 59099/16, 23231/18 and 47749/18, 17 October 2019.

112 See *Jankauskas v. Lithuania*, § 79; *Lekavičienė v. Lithuania*, § 55.

113 *Özalp Ulusoy v. Turkey*, No. 9049/06, 4 June 2013; *Mesut Yıldız and Others v. Turkey*, No. 8157/10, 18 July 2017; *İzci v. Turkey*, No. 42606/05, 23 July 2013; *Süleyman Çelebi and Oth-*

The ECtHR has previously held that the interpretation and the application of Article 7/2 of the Counter Terrorism Act and Articles 220/6 and 220/7 of the Penal Code were not foreseeable and hence interferences resulting from the application of these articles were not prescribed by law.¹¹⁴

In addition, the Court has held that the courts in Turkey interpret “membership” in a very broad sense. Courts consider attending a protest, shouting slogans and making peace signs as sufficient signs to interpret that the person has acted “on behalf of” the terrorist organisation and to punish them “as a real member”. The fact that legal provisions are drafted and interpreted very broadly, does not provide adequate safeguards against the arbitrary interferences by public authorities. Therefore, according to the ECtHR, in the absence of any substantial evidence, it is not acceptable for the exercise of a fundamental right and freedom to be equated with membership to a terrorist organisation.

Furthermore, sanctions such as arrest, detention or prison sentences due to peaceful expressions and actions also create a chilling effect on others who wish to peacefully attend such political debates and demonstrations.

Academics for Peace are a notable example here. Since grounds for dismissals by emergency decrees are unknown, dismissed academics who have no other investigation or prosecution against them assume that the Academics for Peace petition is the reason why they were dismissed. Therefore, following the Constitutional Court judgment finding a violation of their freedom of expression, all sentences and sanctions -including the annulment of lawyer’s licences, the cancellation of passports and the dismissals themselves- have become unlawful.

The fact that individuals are put under the threat of prosecution and deprivation of liberty, arrested, and punished with heavy prison sentences, create a chilling effect and self-censorship on others who wish to comment on and criticise the actions of state authorities.¹¹⁵ Similarly, although the suspension of the pronouncement of the verdict means that the verdict does not have any legal effect on the accused and puts them under supervision for five years, there is always the risk that the sentence is executed.

ers v. Turkey, No. 37273/10, 24 May 2016; Akarsubaşı and Akçiçek v. Turkey, No: 19620/12, 23 January 2018; Kara v. Turkey, No. 22766/04, 30 June 2009; Erdoğan and Others v. Turkey, No. 15520/06, 13 November 2018; Yavuz and Yaylalı v. Turkey, No. 12606/11, 17 December 2013; Arslan and Others v. Turkey, No. 3752/11, 10 July 2018; Sarıtaş and Geyik v. Turkey, No. 70107/11, 19 June 2018; Faruk Temel v. Turkey, No. 16853/05, 1 February 2011; Şahin Alpay v. Turkey, No. 16538/17, 20 March 2018.

114 Güler and Uğur v. Turkey, No. 31706/10, 2 December 2014; Işıkkırık v. Turkey, No. 41226/09, 14 November 2017; Imret v. Turkey (no. 2), No. 57316/10, 10 July 2018; Bakır and Others v. Turkey, No. 46713/10, 10 July 2018.

115 Kabanov v. Russia, No. 8921/05, 3 February 2011, § 57; Shkitskiy and Vodoratskaya v. Russia, No. 27863/12, 16 October 2018, § 32; Steur v. The Netherlands, No. 39657/98, 28 October 2003, § 44.

This creates a chilling effect on the person concerned and a risk that they refrain from expressing their opinions in the future, even if they complete the supervision period without being sentenced.¹¹⁶ The ECtHR has accepted that being subject to many trials and to the risk of punishment for many years lead to self-censorship and amounts to a type of harassment. For this reason, proceedings which are initiated without any assessment of content and context will violate freedom of expression.¹¹⁷

According to the case-law of the Constitutional Court and the ECtHR, it is evident that many participants face a violation of their rights under Articles 10 and 11 of the Convention due to proceedings initiated against them. Given the fact that such proceedings last many years and often result in prison sentences, postponement of admission and bans from practice are not only additional sanctions in nature but they constitute violations in themselves.

In numerous cases concerning expressions of opinions by lawyers, some of whom are human rights defenders, the ECtHR found that the rejection of admission or disbarment of applicants violated freedom of expression.¹¹⁸ Especially in judgments against Azerbaijan, notably in *Hajibeyli and Aliyev* and *Bagirov*, the Court has opened up to discussion the legal basis of the interference, debating whether it was accessible, foreseeable, clear and comprehensible.

The Court believed the statements used as grounds for disbarments were protected under Article 10 of the Convention and could not be considered as reasons to limit the freedom of expression in a democratic society demanding pluralism, tolerance, and open mindedness.

While assessing the proportionality of the interference, the Court noted the nature and the weight of punishments and concluded that disbarment as the heaviest sanction might create a chilling effect on the lawyers' performance of their duties. In this regard, the Court found that the legal basis for disbarment was not relevant and sufficient, that the interference did not pursue a legitimate aim and that Article 10 of the Convention had been violated.

In the case files we received, the investigation and prosecutions which are used as a basis to prevent individuals from practicing as lawyers, rely -as evidence- on statements and actions protected under freedom of expression, assembly, and association.

116 Bekir Coşkun Application, No. 2014/12151, 4 June 2015, § 70; Cem Uzan v. Turkey, No: 30569/09, 20 March 2018.

117 Ali Gürbüz v. Turkey, No. 52497/08, 12 March 2019.

118 Igor Kabanov v. Russia, § 53-59; Shkitskiy and Vodoratskaya v. Russia, § 32; Hajibeyli and Aliyev v. Azerbaijan, No. 6477/08 and 10414/08, 19 April 2018; Bagirov v. Azerbaijan, No. 81024/12, 28198/15, 25 June 2020. For general principles see Kyprianou v. Cyprus [GC], No. 73797/01, 15 December 2005.

Indefinitely barring individuals from the profession with judgments from administrative courts and the court of appeal which lack personalised assessments and reasoning, violates Articles 10 and 11 of the Convention.

4. Violation of the Right to Property

The ECtHR considers that the right to property applies to “existing possessions’ or assets, including claims, in respect of which the applicant can argue that he or she has at least a ‘legitimate expectation’ of obtaining effective enjoyment of a property right”.¹¹⁹ For lawyers whose licences were withheld or annulled following an objection from the Ministry of Justice, there is a clear interference with their right to property. According to the case-law of the Court, future income falls under the scope of the right to property “only if the income has been earned or where an enforceable claim to it exists”.¹²⁰ In cases where applicants have built up a clientele, the Court considers that this constitutes a private right and an asset which is protected under Article 1 of Protocol No. 1.¹²¹ As a result, the Court assesses the professional activities of lawyers and their clientele in this context.¹²²

The ECtHR interprets the scope of the clientele broadly, regards professional titles and related privileges, business licences and permissions as part of this clientele and makes a collective assessment of the loss of revenues, business licences, clientele and commercial reputation in general to decide whether the right to property is applicable.¹²³ Since licences, including lawyer’s licences, allow individuals to perform their professional duties and build up a clientele, the Court considers them as part of possessions.¹²⁴ Therefore, individuals who are unable to start their traineeship or cannot obtain their licence because of lawsuits filed by the Ministry of Justice, lose their professional title, clientele and income.¹²⁵

119 European Court of Human Rights, “Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights”, Last updated: 30 April 2020, § 11.

120 European Court of Human Rights, “Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights”, § 40.

121 Van Marle and Others v. The Netherlands, No. 8543/79, 26 June 1986, §§ 39-41; Wendenburg and Others v. Germany (dec.), No. 71630/01, 6 February 2003; Buzescu v. Romania, No. 61302/00, 24 May 2005, § 81; Lederer v. Germany, No. 6213/03, 22 May 2006 and Könyv-Tár Kft and Others v. Hungary, No. 21623/13, 16 October 2018, § 31.

122 Van Marle and Others v. The Netherlands, § 41; Döring v. Germany (dec.), No. 37595/97, 9 November 1999; Wenderburg and Others v. Germany; Buzescu v. Romania, § 81.

123 Burak Gemalmaz, “Mülkiyet Hakkı, Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi – 6” [Right to Property, Handbooks for Individual Applications to the Constitutional Court – 6], Council of Europe, 2018, https://www.anayasa.gov.tr/media/3548/06_mulkiyet_hakki.pdf, p. 43.

124 Buzescu v. Romania, §§ 82-83.

125 The ECtHR accepted that loss of income due to the abolition of exclusive rights of audience

The ECtHR found that the annulment of the readmission of a lawyer applicant to the bar association five years after he was readmitted violated his right to property.¹²⁶ The Court took into account that the applicant submitted documents, demonstrating his professional activities as a lawyer during this period. Therefore it is advisable that applicants submit documents, such as contract samples or receipts, to administrative courts, the Constitutional Court and the ECtHR, in order to demonstrate that they have earned an income and hence have a “legitimate expectation” that they would have continued to earn this income if their licences was not annulled.

At this point, it is possible to turn to bar associations for assistance. Head of the Izmir Bar Association Özkan Yücel has stated that, in cases when a lawyer who is re-admitted files a compensation claim, the Izmir Bar provides a tariff list for legal aid services or average potential income from clients.

States are also under the obligation to provide that interferences with the right to property can be challenged before domestic courts¹²⁷ and violations can be compensated¹²⁸. However, lawyers who become unable to practice due to the annulment of their licences later received no compensation for their loss of income.

Most participants who began practicing as a lawyer but were later removed from the bar list by an administrative court order, explained that they had started working for another lawyer or established their own law firm, had clients -though small in numbers-, started to take cases, attend hearings and earn an income. Some participants expressed that they were reluctant to establish their own office, fearing that their licences will be taken away. Especially for those who were dismissed by emergency decrees, given the economic loss that is part of their civil death, working as a lawyer was perhaps the only option available for them to economically support themselves and their families.

A common concern amongst lawyers whose admissions risk annulment, is how to explain to employers and clients that they will no longer be able to follow their cases. Handing over cases to other lawyers also creates a financial burden for those who have been pre-paid for their services. Many participants were also concerned about their future income. In almost all interviews, respondents reported that many lawyers who lost their licences work as paralegals or clerks with low salaries and “run errands”. Respondents expressed that even these jobs felt “like a blessing” and explained that

before higher courts by the Federal Constitutional Court fell under the scope of Article 1 of Protocol No. 1 but found that the decision was proportionate and justified. See *Wendenburg and Others v. Germany* (dec.).

126 *Buzescu v. Romania*.

127 *Könyv-Tár Kft and Others v. Hungary*, No. 21623/13, 16 October 2018, § 50. See

128 The Court found a violation of right to property because the applicant was not compensated for her unpaid salary for the period of her suspension from judicial office, although she was not convicted. See *Anželika Šimaitienė v. Lithuania*, No. 36093/13, 21 April 2020.

some dismissed judges and prosecutors now worked at restaurants or gas stations.

The situation of women in this regard requires special attention. When faced with the risk of losing their licence, young women who have left their families and hometowns and who began to lead economically and socially independent lives, also face the risk of losing this independence and freedom.

In conclusion, when lawyers who began to build up a clientele and earn an income are struck off the bar list, they lose their clients and face significant economic losses which are not compensated by the courts. This constitutes a violation of their right to property.

5. Violation of Article 18 – Prohibition from restricting the rights and freedoms for purposes not prescribed by the Convention

Article 18 of the ECHR, titled “limitation on use of restrictions on rights”, prohibits the restriction of rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention, and is defined as “an early warning mechanism against the misuse of restrictions on right and freedoms”.¹²⁹ Articles 13 and 14 of the Constitution of Turkey also stipulates that rights and freedoms must be restricted only in accordance with the letter and the spirit of the Constitution and must not pursue an aim not prescribed by the Constitution. The Constitutional Court found applications alleging a violation of Article 13 and 14 to be manifestly ill-founded, hence inadmissible.¹³⁰

The ECtHR has so far delivered only eighteen judgments finding a violation of Article 18 taken in conjunction with the right to liberty and security and with the right to respect for private life and the right to freedom of assembly. The Court has also communicated numerous cases under these rights, as well as under the right to fair trial, freedom of expression, right to property and freedom of movement.¹³¹

The Aliyev case was the first case in which the Court found a violation of Article 18 in conjunction with Article 8. Mr. Aliyev, a human rights lawyer and the head of a non-governmental organisation in Azerbaijan, was detained following a search in his home and office. Taking into consideration the harsh and restrictive legislation on civil society organisations and the sanctions imposed on the applicant, the Court found that the restrictions on Aliyev’s rights did not pursue aims prescribed by the Convention and instead aimed to silence and punish him.¹³² This was also the first judgment related to human rights lawyers, which found a violation of Article 18. Although the

129 For more information see Benan Molu, **Siyasi Amaçlı Tutuklama Yasağı Çerçevesinde İnsan Hakları Avrupa Sözleşmesi’nin 18. Maddesinin Kapsamı, Uygulanması ve 18. Madde İhlali Kararlarının Sonuçları**, Oniki Levha Yayınları, p. 7.

130 Benan Molu, p. 84-95.

131 Molu, p. 43-45.

132 Aliyev v. Azerbaijan, No. 68762/14, 20 September 2018.

Court has communicated cases related to disbarments under Article 18¹³³, it has not yet delivered a violation judgment on this issue.¹³⁴

Azerbaijan being a Council of Europe member state where lawyers are systematically pressurised the most, the ECtHR began to assess this matter not only under Articles 8 and 10 but also under Article 18. Disbarment of lawyers by the Azerbaijan Bar Association for having exercised their freedom of expression, assembly, and association and for performing their professional duties, constitutes one of the most prevalent and grave forms of this pressure. As a disciplinary measure, the Azerbaijan Bar Association may suspend lawyers for three months to one year or disbar them. Once a lawyer is disbarred, they cannot perform any professional duties or represent clients.¹³⁵ Currently at least 21 lawyers have been disbarred, suspended, or criminally prosecuted. This is a relatively high number for a state like Azerbaijan.¹³⁶

It is especially significant that the small number of human rights lawyers who take on political cases and represent dissidents are being disbarred. The Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on Human Rights Defenders have stated that disciplinary and criminal investigations and disbarments are being used as tools to punish lawyers who take on sensitive cases.¹³⁷ Such measures not only punish lawyers for their professional activities but also aim to dissuade them from taking on these cases in the future, hence violating Article 18.

In recent years, the Court has relaxed its strict standard of proof when deciding on a violation of Article 18 and now accepts reports, statistics and opinions by interna-

133 See *Hasanov v. Azerbaijan*, No. 68035/17, Communicated on 4 June 2018.

134 The Court found a violation of Articles 8 and 10 but did not examine Article 18 separately in *Bagirov v. Azerbaijan*, §§ 104-105.

135 Council of Europe Commissioner for Human Rights, “Report Following Her Visit To Azerbaijan From 8 To 12 July 2019”, 11 December 2019, <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-urges-the-azerbaijani-authorities-to-respect-freedom-of-expression-improve-access-to-lawyers-and-uphold-the-rights-of-internall>.

136 Azerbaijan has the lowest number of lawyers per 100.000 inhabitants amongst the Council of Europe member states. See Council of Europe Commissioner for Human Rights, “Azerbaijan should ease the pressure on free speech, improve the situation of lawyers and continue to work towards better livelihood opportunities for IDPs”, 12 July 2019, <http://bit.ly/2XG2fdD>.

137 Council of Europe Commissioner for Human Rights, “Report Following Her Visit To Azerbaijan From 8 to 12 July 2019”, <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-urges-the-azerbaijani-authorities-to-respect-freedom-of-expression-improve-access-to-lawyers-and-uphold-the-rights-of-internall>; Council of Europe Commissioner for Human Rights, “Third party intervention by the Council of Europe Commissioner for Human Rights-Bagirov v. Azerbaijan”, 22 November 2016, <https://www.coe.int/en/web/commissioner/-/azerbaijan-repression-of-lawyers-who-defend-human-rights-must-stop>.

tional and non-governmental organisations as circumstantial evidence together with the political and social context in its Article 18 assessment.¹³⁸ As a result, it becomes even more crucial for national and international organisations to follow up on cases on this matter, gather statistics and write reports so that lawyers from Turkey can rely on Article 18 in their applications before the Court. These pressures against the profession of lawyer cannot be considered independent from the human rights violations and the pressure in the country as a whole. With regard to states like Turkey, the ECtHR has established that government critics, members of parliament, journalists, civil society activists, human rights defenders, and lawyers face arbitrary arrest, detention or other measures as part of a systematic structure and that this “legal harassment” violates Article 18. The Court has emphasised that, “against this background ... the alleged need in a democratic society for a sanction of disbarment of a lawyer in circumstances such as this would need to be supported by particularly weighty reasons”.¹³⁹

Taking into consideration the increasing “legal harassment” against lawyers and the profession of lawyer in Turkey, these decisions barring admission aim to punish individuals with a certain view for having exercised their rights and freedoms and to leave dissidents without lawyers, hence violating Article 18.

138 *Merabishvili v. Georgia* [GC], No. 72508/13, 28 November 2017, § 317.

139 *Bagirov v. Azerbaijan*, § 103.

IV. CONCLUSION AND RECOMMENDATIONS

The pressure on lawyers and the interferences with the profession of a lawyer have increased especially during and after the state of emergency period. Lawyers are being targeted and are subject to serious legal harassment through investigations and prosecutions, arrests and detention, and prison sentences. This legal harassment creates a chilling effect on lawyers and affects not only their rights but also the rights of their clients. This situation has been heavily criticised by the Council of Europe Commissioner for Human Rights and organisations such as Amnesty International and Human Rights Watch.

One of these tools of pressure and interference is preventing individuals, who are being investigated or prosecuted or who were dismissed by emergency decrees, from registering on the traineeship list or the bar roll.

The legal bases for withholding these lawyers' licences during ongoing prosecutions are Article 5/1-a of the Attorneyship Law regulating the impediments to admission into the profession and Article 5/3 authorising bar associations to postpone the admission decision until the end of the prosecution. However, contrary to the clear letter of the law, these provisions are extended to investigations as well. At times, investigations and prosecutions continue for many years, during which the person concerned is unable to practice as a lawyer. Decisions to postpone admissions for an undefined period also amount to a disproportionate interference. Although the legal impediment to admission clearly requires a person to be convicted, administrative courts annul decisions of admission to the bar roll even when the pronouncement of the verdict is suspended. The interpretation and the application of Article 5 of the Attorneyship Law in this manner disregards the discretion of the bar associations and their autonomy, especially when deciding on admissions to the profession, and disproportionately restricts the rights of candidate lawyers in breach of their presumption of innocence.

As for individuals dismissed by emergency decrees, the legal basis is the emergency decree provision preventing the dismissed individuals from taking up any work in public service. The Ministry of Justice and the administrative courts believe that the profession of lawyer constitutes public service and those dismissed are indefinitely

banned from practicing as a lawyer. Even when the investigations are concluded with decisions of non-prosecution or the prosecutions result with the suspension of the pronouncement of the verdict or acquittal, the Ministry of Justice and administrative courts argue that those dismissed cannot practice as lawyers. This is one of the rights violations created by the emergency decrees, causing a lifelong deprivation of rights and a condemnation to civil death.

A person's inability to register with the bar association or their disbarment have significant psychological, social, and economic effects on the person concerned and their families. It also constitutes an interference with the right to fair trial, the right to respect for private life, the freedom of expression, assembly and association, and the right to property. Whether the legal basis for this interference is compliant with the ECtHR case-law is disputable. The interpretation of Article 5 of the Attorneyship Law contrary to the letter of the law and its application by the courts are highly uncertain and unforeseeable. The proceedings before both the bar associations and the administrative courts lack procedural safeguards. Nevertheless, even if it was deemed that the legal basis of the interference met the relevant criteria and the interference pursued the legitimate aim of "prevention of disorder", the interference is not proportionate to the legitimate aim and is not necessary in a democratic society.

The ECtHR considers disputes related to licences regulating professional activities to fall under the scope of Article 6. Bearing in mind the case-law of the Court, several problems concerning the rejection of traineeship and licence applications call for attention. Since the annulment cases are heard between the Ministry of Justice and the UTBA, the applicant lawyer learns about the case only if they are notified. Often the notification is delayed, sometimes the stay of execution decision is delivered before the person concerned can submit a petition. The inability for individuals to effectively participate in the proceedings can amount to a violation of their right to a court. In most cases, taking into account the view of the Ministry of Justice, the administrative courts deliver judgments in a stereotyped manner. These judgments are later upheld by the court of appeal without any reasoning. This amounts to a violation of the right to a reasoned judgment. In addition, it can be observed that in some cases of individual applications to the Constitutional Court, the length of proceedings violates the right to be heard within a reasonable time.

The inability of those who are being investigated or prosecuted or who have received decisions of non-prosecution, suspension of the pronouncement of the verdict or acquittal, to enrol on the traineeship list or register on the bar roll is in breach of their presumption of innocence. The fact that this is an indefinite restriction renders the interference even more disproportionate. Especially for those dismissed, it is unacceptable that, in the absence of any conviction and only with an administrative assessment, they face a lifelong ban which prevents them from practicing as lawyers.

Many individuals whose traineeship or licence applications were rejected due to ongoing investigations and prosecutions, are in fact subject to proceedings for their actions which fall under the freedom of expression, assembly, or association. Notably, young candidate lawyers face investigations and prosecutions for terrorist propaganda or membership to a terrorist organisation for the peaceful demonstrations they attended at university. Academics for Peace have also been tried and acquitted for having signed a petition which fell under the scope of freedom of expression, as established by the Constitutional Court. Nevertheless, academics have not been able to obtain their licences and some were even unable to start their traineeship.

Preventing individuals from enrolling on the traineeship list or registering at the bar roll constitutes an interference with the professional life and hence with the right to respect for private life. Those who cannot practice as lawyers also suffer from difficulties finding other jobs and earn less than their counterparts. This situation is especially serious for those dismissed since they have been “blacklisted”. Indefinitely preventing investigated and prosecuted individuals from practicing and introducing a lifelong ban on those dismissed with emergency decrees are clearly disproportionate interferences.

The inability to perform the profession of lawyer also affects the right to property. Individuals who were registered at the bar roll, who started their practice and built up a clientele, experience a significant economic loss when they lose their licences because of administrative court cases filed by the Ministry of Justice. This disproportionate interference may violate the right to property of those who lose their clientele and their income.

Although not yet published, the Constitutional Court announced that, in the cases of two dismissed applicants, it found a violation of the right to fair trial of one applicant and the right to respect for private life of the other applicant. We hope that the interferences will be lifted following these judgments for Mahmutoğlu and Bayhan.

While this report is about the legal process for individuals who have not been admitted into the profession of lawyer and the case-law of administrative courts, the Constitutional Court and the ECtHR, both the underlying violations discussed in this report and the remedies for these violations are political in nature.

Not admitting individuals to the profession of lawyer because they have been dismissed, or are being investigated or prosecuted, is the last example of already existing pressures and interferences directed at lawyers and their profession, which increased after the declaration of the state of emergency. It is also not independent from the increasing pressures and interferences directed against dissidents and human rights defenders.

The frequent and intense use of an article which was seldomly used before, Article 5 of the Attorneyship Law, after the coup attempt is also part of such pressures.

It is evident that being prevented from practicing as a lawyer affects not only the individual concerned, but also others who need to be defended. Where bar associations risk separation according to political opinions in the newly amended system, this interference with the profession of lawyer aims to dissuade dissident students at universities from exercising their rights and freedoms, to exclude from the profession individuals who are not deemed “agreeable”, to “cleanse” the future of the profession of lawyer from individuals with certain opinions, and to leave “a certain group of people” defenceless, without lawyers.

In her report following her latest visit to Turkey, the Council of Europe Commissioner for Human Rights Mijatović underlined that concerns regarding judicial independence and impartiality were already present but these concerns were overshadowed by more serious ones following the constitutional amendments of 2017.¹⁴⁰ The Commissioner stated that the worrying situation worsened during the state of emergency and “that one of the most basic guarantees of judicial independence is effectively suspended” as a result of the legislation that allows for dismissals to continue until July 2021.¹⁴¹ She also emphasised that judges were selected by a board whose majority consisted of representatives of the executive.¹⁴² The Commissioner also “note[d] numerous signs that the Turkish judiciary is influenced by the political conjuncture”.¹⁴³

Indeed, in the case of *Selahattin Demirtaş*, the ECtHR established that “the tense political climate in Turkey during recent years has created an environment capable of influencing certain decisions by the national courts” and that judicial authorities react more harshly against dissidents.¹⁴⁴ Taking into account the general political situation in Turkey, the Court made a similar assessment later in the *Osman Kavala* application.¹⁴⁵ According to the Court, the reason behind the detention of *Demirtaş* and *Kavala* is to silence and punish dissidents and human rights defenders. By stifling pluralism and limiting the freedom of political debate, this not only threatens individual rights and freedoms but also the democratic system as a whole.¹⁴⁶

In these judgments, the observation that the judiciary is under the influence of the

140 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, § 14.

141 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, §§ 19, 21.

142 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, § 23.

143 Council of Europe Commissioner for Human Rights, “Report Following Her Visit to Turkey from 1 to 5 July 2019”, 19 February 2020, §§ 28, 30.

144 *Demirtaş v. Turkey* (no. 2), No. 14305/17, 20 November 2018, § 271.

145 *Osman Kavala v. Turkey*, No. 28749/18, 10 December 2019.

146 *Demirtaş v. Türkiye* (no. 2), § 273.

political climate relates mostly to decisions of detention and continuation of detention which include no substantial evidence and reasoning, delivered by criminal judgeships of peace and assize courts. However, having regard to the research in this report, it is possible to reach a similar conclusion in relation to administrative court judgments.

As discussed before, the position and the role of the Ministry of Justice in admitting people into the profession of lawyer lie at the root of the problem. The Attorneyship Law and international human rights law documents leave the authority and the discretion to the bar associations and the UTBA, yet the Ministry of Justice has become the ultimate decision maker in practice. Even when the bar associations and the UTBA approve of admission, the Ministry of Justice files a lawsuit for the annulment of this decision.

According to the files we have received, almost all administrative courts and courts of appeal decide in line with the requests of the Ministry of Justice. The judgments which do not fall in line with the Ministry's request are later overturned upon the Ministry's objection. In the end, it is the Ministry's request which is upheld. In parallel to the findings of the Commissioner, the influence of the Ministry of Justice on administrative courts and courts of appeal is clearly felt in these judgments delivered completely in favour of the Ministry.

The fact that administrative courts and courts of appeal, in most cases, deliver identical judgments; make no personalised, substantial assessment; give no consideration for the judgments of the Constitutional Court and the ECtHR; provide no reasoning; decide in line with the requests of the Ministry of Justice which represents the government and provide no opportunity of redress, casts a shadow on the effectiveness of this remedy.¹⁴⁷

This practice has reached such a point that, some bar associations and the UTBA for some time, have stepped back, as they were confident that the Ministry of Justice would file a lawsuit and the administrative courts and the courts of appeal would decide in favour of the Ministry. Arguing that court judgments are binding, bar associations immediately put in force the stay of execution and/or annulment decisions, and strike individuals off the bar lists.

Moreover these decisions also include the suspension of the pronouncement of the verdict or acquittal decisions, contrary to the letter of Article 5 of the Attorneyship Law and due to a very broad interpretation of the law. Amendments to Article 5 of the Attorneyship in this sense would be beneficial.

147 According to the case-law of the ECtHR, the perceived ineffectiveness of a remedy is insufficient not to exhaust the remedy. To prevent any loss of rights, "ordinary domestic remedies to be exhausted" must be exhausted until the Constitutional Court and the ECtHR decide otherwise.

There is also the risk that favourable judgements will not be taken into consideration and will not be executed. This practice started with the Constitutional Court judgment of Can Dündar and Erdem Gül, and continued with judges being investigated, suspended or appointed to other cities when they deliver release orders or acquittal decisions. This attitude persisted in the Selahattin Demirtaş and Osman Kavala cases where the ECtHR found that they were detained with an aim to silence and punish them and needed to be released immediately.

Therefore, it would not suffice if the legislation was amended or a favourable court judgment was delivered. A political will must be put forward with a view to prevent the criminalisation of professional and political activities protected under the freedom of expression, assembly, and association and to fully establish judicial independence. The lifelong deprivation of rights caused by emergency decrees must be lifted. For this reason, bar associations, the UTBA and civil society organisations must adopt a rights-based perspective and continue to withstand all unjust practices without any discrimination or reservation.

RECOMMENDATIONS

To the Government of Turkey and to the Grand National Assembly of Turkey

- Redress the deprivation of rights stemming from emergency decrees, reinstate individuals who were dismissed from the public service without any basis, and remedy the rights violations they experienced in this process;
- Do not investigate and prosecute individuals when they exercise their freedom of expression or freedom of assembly and association;
- Take the necessary steps to put an end to the increasing pressure and legal harassment towards lawyers, lawyers' organisations, and bar associations in Turkey;
- Stop the application of Article 5/3 of the Attorneyship Law to investigations, as the Article prescribes that, in case the candidate is being prosecuted for a crime which requires a sentence under Article 5/1-a, the decision for admission to the profession of lawyer may be stayed until the end of the prosecution;
- Amend the phrase in Article 5/1-a of the Attorneyship Law which states "notwithstanding the time period foreseen under Article 53 of the Turkish Penal Code, receiving a prison sentence exceeding two years for a crime committed intentionally or conviction for crimes against state security, constitutional order and the operation of this order" and add a reservation regarding expressions and actions protected under freedom of expression, association and assembly, similar to Article 7/2 of the Counter Terrorism Law; do not let conviction be an automatic and lifelong impediment and add a clear phrase to the Article stating that a decision, such as the suspension of the pronouncement of the verdict, which does not constitute "conviction" or "verdict" is excluded from the scope of the Article;
- Pursuant to documents which set out international standards, such as the UN Basic Principles on the Role of Lawyers (Havana Principles) and the Recommendation No. R (2000) 21 on the Freedom of Exercise of the Profession of Lawyer, remove the Ministry of Justice from the decision making process for

traineeship and bar admissions and give the UTBA the sole authority on this matter;

- For those who have been illegally deprived of practicing as lawyers, compensate all losses, including loss of profit, non-pecuniary damage, costs necessary for legal assistance and psychological and social services,

TO THE MINISTRY OF JUSTICE

- End the practice of submitting negative opinions and filing lawsuits requesting injunctions and annulment of administrative actions in order to prevent those who were dismissed, are being investigated or prosecuted, have been acquitted or have received a decision for the suspension of the pronouncement of the verdict because of the exercise of their rights or freedoms guaranteed under the Constitution or the ECHR, from enrolling on the traineeship list or the bar roll.

TO THE BAR ASSOCIATIONS AND THE UNION OF TURKISH BARS (UTBA)

- Stop security investigations into those who apply for traineeships and those who request admission to the bar;
- Avoid treatment contrary to the presumption of innocence and the principle of equality, regardless of the alleged crimes committed;
- Handle investigations and prosecutions against applicants on a case-by-case basis and with consideration for human rights law principles;
- Do not postpone the admission decision in case the investigation or prosecution was instigated due to political opinions or as a result of the exercise of rights or freedoms guaranteed under the Constitution or the ECHR, such as freedom of expression, peaceful assembly, or association;
- Resist the negative opinions delivered by the Ministry of Justice and take principled decisions despite the possibility that the Ministry might file a lawsuit, that the administrative courts might stay the execution of and annul the decision of the bar, and that the UTBA might pay a high sum of litigation costs;
- As bar associations, intervene as third parties in cases filed for the annulment of bar admissions;
- Report cases regularly and with statistical information, and follow cases in an active manner;

- Provide information about the process to individuals if their traineeship or licence applications are rejected or if the Ministry of Justice brings a case for their removal from the bar lists;
- Establish solidarity networks to ensure that young lawyers who have just began their profession are minimally affected in psychological and economic terms if they are removed from the bar lists.

TO CIVIL SOCIETY ORGANISATIONS AND LAWYERS' ORGANISATIONS

- Follow, report on, and keep statistical information on cases regarding the increasing pressure and legal harassment against lawyers, lawyers' organisations and bar associations in Turkey, and submit expert opinions in cases and applications, notably before the Constitutional Court and the ECtHR;
- Establish solidarity networks to ensure that young lawyers who have just began their profession are minimally affected in psychological and economic terms if they are removed from the bar lists.

TO INTERNATIONAL HUMAN RIGHTS ORGANISATIONS AND LAWYERS' ORGANISATIONS

- Follow, report on, and keep statistical information on cases regarding the increasing pressure and legal harassment against lawyers, lawyers' organisations and bar associations in Turkey, and submit expert opinions in cases and applications, notably before the Constitutional Court and the ECtHR;
- In bilateral relations and during dialogues and negotiations with Turkey, notably with the Council of Europe and the European Union, raise the issue of increasing interferences with the profession of lawyers in Turkey, with individual cases included in this report and the general overview that is set out;
- Support civil society initiatives which will contribute to lawyers' pursuit of their professional work independently and without pressure.

