

Concerns about access to the legal profession and increasing disbarments of lawyers in Turkey

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We, the undersigned organizations, have long been deeply concerned about the increasingly challenging and hostile environment in which lawyers in Turkey have had to operate since the state of emergency following the attempted coup in July 2016. Lawyers have been subjected to judicial harassment, including mass arrests, raids, violent attacks, threats, surveillance, illegitimate criminal charges, unfair trials and harsh sentences in disregard of the most basic principles of the rule of law.

We are worried about another tool used by the government to further target and pressure lawyers, by preventing individuals who are being investigated, prosecuted or dismissed by emergency decrees which have now become part of the permanent law, from enrolling in law apprenticeships or obtaining their license to practice law.ⁱ This systematic practice has increased considerably since the state of emergency.ⁱⁱ We are also alarmed about the growing number of lawyers who have seen their licenses to practice law annulled on the same grounds.

The legal basis for these practices is article 5 of the Attorneyship Law, which regulates impediments to admission to the profession. Pursuant to article 5/1-a, receiving a prison sentence exceeding two years for a crime committed intentionally, or being convicted for certain crimes including crimes against state security, are impediments to admission to the profession. Pursuant to article 5/3, a decision regarding an application for admission may be postponed until the end of a prosecution for a crime listed in article 5/1-a. The discretionary power to postpone is to be exercised by the Bar Associations, but we are concerned that in practice decisions are based mostly on the mere existence of a prosecution and on the type of the alleged crime. Also we have learned that, contrary to article 5/3, decisions to postpone have been issued against lawyers who are not being prosecuted, but are merely subject to ongoing investigations.

In addition, we have received reports that the practice of preventing individuals from being admitted as a lawyer mostly targets (future) lawyers who defend victims of (alleged) human rights or individuals who have exercised their freedom of expression by publicly speaking out in cases that are viewed as politically sensitive. Such (future) lawyers are routinely being investigated and prosecuted for association with or membership of a terrorist organisation. These investigations and prosecutions are based on little or no evidence and at times continue for many years. Decisions to withhold from lawyers their licences in such cases, or to postpone their admissions, therefore prevent them from practising as lawyers for an undefined period of time.

The United Nations (UN) Special Rapporteur on the Independence of Judges and Lawyers has stated that “mandatory registration presupposes the existence of strict and clear admission procedures and should not lead to a situation where qualified legal practitioners are denied equal and effective access to the bar”.ⁱⁱⁱ Moreover, the Special Rapporteur has stated that “States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such admission processes”.^{iv} With regards to the disbarment of lawyers the Special Rapporteur has stated that “disbarment, which consists in taking away a lawyer’s license to practice law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards” and stressed that “disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”^v

We emphasise that lawyers play a vital role in the protection of the rule of law and human rights. Their work is indispensable for ensuring effective access to justice for all. The specific rights and privileges that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of

the rights of the lawyer, but also for the protection of the rights of their clients, who have the right to effective and equal access to a lawyer of their own choosing.

In view of the above, we call on the Turkish authorities to respect the rights of lawyers and guarantee that:

- all existing and future lawyers have fair access to practise the legal profession, and
- are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and
- lawyers are not subjected to disbarment or other disciplinary measures on improper grounds.

Signatory organisations:

- AIJA – International Association of Young Lawyers
- Institute for the Rule of Law of the International Association of Lawyers (IJA-IROL)
- International Bar Association’s Human Rights Institute (IBAHRI)
- Lawyers for Lawyers
- Lawyers' Rights Watch Canada
- The Law Society of England and Wales
- The Netherlands Helsinki Committee

ⁱ Article 5 of the Attorneyship Law No. 1136 enshrines the legal basis for rejecting or postponing admissions for traineeships or licences in Turkey. The interpretation and the application of Article 5 of the Attorneyship Law by the Ministry of Justice and the administrative courts led to Article 5 (3) also being applied to candidates who are under criminal investigation, while the article explicitly states that the decision about the admission to the profession of lawyer may be postponed only in the case of a prosecution. Moreover, administrative courts annul decisions of admission to the bar roll even when the pronouncement of the verdict is suspended. Article 5 (3) allows for a decision to postpone admission to remain in force until the end of the prosecution. This leads to candidates not being able to register for the bar during the lengthy investigations or prosecutions they are subjected to.

ⁱⁱ “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”. For detailed statistics on license applications see: Benan Molu and İdil Özcan, “Lawyers without Licenses: Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession”, Tahir Elçi Human Rights Foundation, December 2020, p. 23-24.

ⁱⁱⁱ 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>, par 61.

^{iv} 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>, par. 77.

^v Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348 (22 Aug. 2016), par. 96.