

Lawyer Rights Watch Report
May, 2018

LAWYER RIGHTS WATCH

**REPORT:
TURKISH LAW IS DIMINISHING DAY BY DAY**



VICTIMIZATION OF LAWYERS

July 15, 2016 is undoubtedly one of the most embarrassing chapters in the history of Turkish democracy and legal history. Only a few hours after the unsuccessful coup attempt that took place the evening of July 15, 2016, the official sources explained that the action was the initiative of the Hizmet movement. In such a short period of time, a healthy examination of the actualization of the coup attempt. Therefore, it is not hard to imagine the serious prejudice and heavy accusation that left thousands of people under suspicion.

Today in Turkey, there are thousands of senior commanders and soldiers, along with tens of thousands of doctors, engineers, senior judges, lawyers, teachers, health personnel, academics and individuals from many other major occupational groups —**more than 150,000 in total**— who are connected to Hizmet movement and are being accused of aiding and abetting the coup attempt. They have lost their jobs in the public and private sectors because of these accusations. **More than 60,000 individuals**, including 16,000 women and hundreds of children, which totally amount to more than **are imprisoned and on trial**.

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In particular, **the expulsion of lawyers and judges from their respective jobs and their prosecution is undermining faith in the legal institutions in Turkey**. It is unacceptable in the framework of a modern state of rule of law to expel prosecutors and high judicial personnel from their profession without regard for their immunity or human rights on the grounds that they are connected with the Hizmet movement or have taken on the cases of individuals charged in reference to the *alleged* FETO/PDY.

VICTIMIZATION OF JUDGES AND PROSECUTORS

The Minister of Justice, Abdulhamit Gul, announced that 3,920 judges and prosecutors have been expelled from their duties; in addition, 22 members of the **Supreme Board of Judges and Prosecutors, 208 members of the judiciary and 91 members of the Council of State Court have been expelled from duty**. When visiting the AK Party's Bursa Provincial Presidency in response to journalists' questions, Gul emphasized that, **"The fight against FETÖ continues with determination."** By answering the questions in such a manner, he was sending a message to the members of the judiciary that the expulsions and investigations would continue.¹

¹ Source: Pro-government media <http://www.milliyet.com.tr/abdulhamit-gul-3-bin-920-hakim-savci-bursa-yerelhaber-2298005/>

VICTIMIZATION OF LAWYERS IN NUMBERS

As of July 15, 2016, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), **approximately 570 lawyers have been arrested, 1,480 have been investigated in some form or other, and 79 have been sentenced to long prison terms.** In addition, **about 34 bar associations have been closed for alleged links to a terrorist organization.** The OHCHR also “identified a pattern of persecution of lawyers representing individuals accused of terrorism offences”.²

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However, according to another source in Turkey, as of February 28, 2018, **1,539 lawyers have been subject to investigation while another 579 lawyers have been detained and are being tried in court.**³ The legal profession, as a self-employment business,⁴ is now under serious pressure and is being weakened by the legal environment in Turkey. It is unacceptable for lawyers to be prosecuted merely for performing their profession.

Abdulkadir Aksoy, an attorney-at-law who had taken on the case of 75 individuals accused in reference to the FETO-PDY trial, is now on trial for three years despite his advanced age and paralysis. Despite the medical reports presented by his lawyers during every session of his trial, the court has denied his request for release on medical grounds.⁵

REPORTS ABOUT VICTIMIZATION OF LAWYERS

1. United Nations Report Details Extensive Human Rights Violations⁶

In a 28-page report on Turkey covering the year 2017, the OHCHR came to the conclusion that “routine extensions of the state of emergency in Turkey have led to profound human rights violations against hundreds of thousands of people,” as well as a deterioration in the rule of law .

According to the UNCHR report, more than 4,200 judges and prosecutors were dismissed from their work in accordance with the administrative decisions of the Supreme Council of Judges and Prosecutors (HSYK), and two judges were expelled from the Constitutional Court. In addition, 22,474 people lost their jobs due to the closure of private institutions such as foundations, trade unions and media outlets. The State of Emergency has caused a significant reduction in civil society space. The government permanently closed 1,719 organizations, including human rights

² http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

³ <https://arrestedlawyers.org>

⁴ Avukatlık Kanunu, Madde-1 <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1136.pdf>

⁵ Source: Pro-government media <https://www.yeniakit.com.tr/haber/fetonun-avukat-havuzu-ortaya-cikti-368056.html>

⁶ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22853&LangID=E>

movements, humanitarian aid movements, lawyer associations, foundations, and NGOs.

2. The Italian National Bar Association Expressed Solidarity with Turkish Lawyers⁷

The Italian National Bar Association, Il Consiglio Nazionale Forense, released a statement on April 5, 2018, which is celebrated as the Day of the Lawyer in Turkey.

The statement expressed solidarity with Turkish lawyers and asked Italian authorities to urge the Turkish Government to abide by its obligations under national and international law.

According to data from the Turkish Bar Association (TBB), **500 lawyers celebrated the Day of the Lawyer in Turkish prisons this year**. 390 lawyers were arrested in **2017**, and with the arrests in **2018**, this number rose to **500**.

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3. Joint Oral Statement on the Situation of Lawyers and Judges in Turkey⁸

On March 6, 2018, the Law Society of England and Wales, together with the IBA Human Rights Institute (IBAHRI), Lawyers for Lawyers (L4L), the Bar Human Rights Committee (BHRC), Union Internationale des Avocats (UIA), Lawyers Rights Watch Canada (LRWC) and Judges for Judges (J4J), wrote a joint statement to highlight the ongoing challenges faced by the legal profession in Turkey.

In the joint statement, these organizations raised concerns over the widespread use of torture and other ill-treatment in the aftermath of the attempted coup in Turkey, the lack of effective investigations, and the on-going reports of torture. The organizations also shared their concern over the widespread and systematic arbitrary arrest and detention of judges and lawyers in Turkey.

4. The Cape Law Society Expresses Concern with Wide Spread Arrests and Detention of Judges and Lawyers in Turkey⁹

On March 20, 2018, the South African Cape Law Society noted in a media statement its concern about the widespread, systemic and arbitrary arrest and detention of judges and lawyers in Turkey, citing “reliable reports [which] indicate that since July 2016:

⁷ <https://turkeypurge.com/italian-bar-association-calls-for-support-for-arrested-lawyers-in-turkey>

⁸ <http://communities.lawsociety.org.uk/human-rights/news-and-events/joint-oral-statement-on-the-situation-of-lawyers-and-judges-in-turkey/5064417.article>

⁹ <http://capelawsoc.law.za/the-cape-law-society-expresses-concern-with-wide-spread-arrests-and-detention-of-judges-and-lawyers-in-turkey/>

- Approximately 1525 lawyers have been prosecuted, 578 have been arrested and held in pre-trial detention and 99 have been sentenced;
- More than 4400 judges and prosecutors have been investigated with over 2400 held in pre-trial detention;
- Legal professionals have been subjected to ill-treatment, torture and excessive solitary confinement; and
- State officials have been granted immunity for acts of ill-treatment and torture committed during their scope of duties under state of emergency decrees.

These gross violations of international norms and standards are a violation of the independence of the judiciary and an erosion of the rule of law in Turkey, and are of extreme concern to the legal community in South Africa. This conduct is accordingly condemned in the strongest terms possible and the government of Turkey is called upon to cease these unlawful practices with immediate effect. The CLS calls on the international community of nations to express its displeasure at such conduct and to regard such conduct of the Turkish government as a gross violation of fundamental entrenched rights in international law.”

INTERVIEW CONDUCTED WITH A VICTIMIZED LAWYER

This section of the report describes an interview conducted with a lawyer who was victimized in Turkey and who left the country as a result of these human rights violations. Personal identifying information is being kept confidential as a security measure to protect the lawyer’s relatives in Turkey.

Our lawyer Y.A. began his story by providing details about the violation of the human rights of his colleagues in Turkey. Another individual who is currently in prison reported that a close colleague of his lawyer was sentenced to eight years and nine months of imprisonment by a court. In addition, that lawyer's deputy president and deputy lawyers were arrested and put on trial, as a result of which they were regretfully sentenced to ten years in prison.

Due to the lack of prisons designated for terrorists, these individuals were initially sent to jails *80 km from their homes*. These people were then taken to another prison *990 km away*. A few months later, when a prison designated only for terrorists was opened, they were again moved, this time into the city center, but still 50 km from their district. Y.A. stated that this was a game of psychological pressure that the government was playing on the victims and their family members. He emphasized this point and explained the psychological pressure put on the lawyer's relatives, who are forced to travel long distances in order to be able to have a weekly or monthly meeting in prison with the lawyer. In addition, Y.A. raised awareness of the economic burden borne by the families due to the distance they have to travel to and from the prison to see the imprisoned individuals.

Another problem that lawyer Y.A. mentioned is the lack of support from professional organizations.

Another problem that lawyer Y.A. mentioned is **the lack of support from professional organizations**. In some cases, the prosecutor's office has written letters to lawyers' association blaming the lawyers and citing the related prosecution of

association members on the basis of the *alleged* FETO-PDY investigation. In response, the lawyers' associations launched disciplinary inquiries about the members of mentioned by the prosecutor's office. The associations sent letters of inquiry to the affected individuals' homes, demanding that they defend themselves against the allegations.

Attorney Y.A. stated that every person can be tried in court in accordance with due process. However, **the Universal Declaration of Principles** (Article 38 of the Constitution)¹⁰ states that a person cannot be found guilty without a final judicial decision, and that the person who has not yet been found guilty cannot be designated by the judicial authorities as guilty because they are presumed innocent. Y.A. lamented that the lawyers' own professional organization is treating them as criminals. He emphasized that every month the lawyers pay regular dues to the association but are nevertheless the necessary spiritual support by their professional colleagues.

According to Y.A., lawyers are on treated this way due to a lack of objectivity and impartiality. According to the law, judgments must be impartial; Y.A. emphasized that lawyers should not be prosecuted for their ideas or ideologies. The principle of the sanctity of the defense is to ensure that lawyers fairly represent their clients, executing their tasks in a neutral way. At the end of our meeting, Y.A. expressed his dissatisfaction with Turkey and the world of professional and human rights organizations that remain silent for so long and are only belatedly reacting to the situation. He stated that **delayed justice is not justice**....

SUGGESTIONS

This section we will list a number of suggestions that we have collected through reports and papers which we can recommend to the Turkish government, international organizations and civil society to put a stop to the victimization of individuals in Turkey within the legal framework.

1. Suggestions for Respect to the Turkish Government

The State of Emergency, which was announced after the July 15 coup attempt, offered the authorities an opportunity to act arbitrarily. Therefore, **it is very important for the Turkish government to end the State of Emergency in order to end the victimization of citizens and the violation of their human rights**. In addition, the State of Emergency Commission, which aims to reduce the grievances caused by Statutory Decrees, should provide appropriate services for this purpose.

¹⁰ <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

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The judiciary should become independent; therefore, the government must put an end to the influence of the legislative body over the judiciary.¹¹ The pressure on judges and prosecutors should be reduced and the courts should be able to take independent decisions. Both lower-ranking courts and higher jurisdictions should avoid taking political decisions by deciding only on the basis of universal jurisprudence and international treaties. Lawyers detained for political reasons after July 15 must be freed as soon as possible; their convictions should be revoked and they should be able return to their profession without any restrictions.

2. Suggestions for Respect to International Organizations

International organizations and human rights organizations have to take into account the 150,000 victimized individuals in Turkey and **they need to help put an end to lawlessness by pressuring the Turkish government.** At this point, these organizations should voice their concern in different fora and meetings, either through the publication of reports or through personal fact-finding missions to Turkey to examine the situation and report on the human right violations and lawlessness in Turkey to the world media.

International organizations, bar associations and lawyers' organizations should express their concern about the political persecution, including imprisonment, of lawyers in Turkey. This will create pressure on the judicial community and raise awareness of this situation and encourage the government to respect due process and human rights.

3. Suggestions for Civil Society and Individuals

Individuals and civil society are increasingly important to the effective day-to-day functioning of a modern society. There is an extremely important task that falls to civil society organizations, in order to end the suffering of victimized individuals in Turkey. Both individuals and civil society organizations, recognizing the problematic situation of lawyers following the July 15 coup attempt, need to launch actions like **petitions, arranging press releases and utilizing social media to urge the authorities to take concrete steps to end the human rights violations in Turkey.**

¹¹ T.C. Anayasası, Madde-138: Mahkemelerin Bağımsızlığı; Madde-140: Hakimlik ve Savcılık Mesleği
<https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

CONCLUSION

We hereby request that the coup attempt of July 15, 2016, which led to the victimization of more than 150,000 citizens, should be investigated in an impartial manner. Those responsible for the coup should be tried within the legal framework, in line with due process. We further request that the **20-months-long process of illegal trials and human rights violations be ended as soon as possible**. We also request that the authorities investigate allegations of **torture and ill treatment** and ensure that those responsible are held accountable for their actions in front of judges within the legal framework. For all of these necessary actions to take place, it is crucial that Turkey end the State of Emergency as soon as possible. As many international reports have stated,¹² we believe that this is the only way for Turkey to reinstate the rule of law and become a country that aims to be more democratic and put emphasis on individual and human rights.

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¹² https://www.theguardian.com/commentisfree/2018/feb/28/nobel-laureates-president-erdogan-turkey-free-writers?CMP=Share_AndroidApp_WhatsApp

CONTACT INFORMATION OF REPUTABLE INTERNATIONAL INSTITUTIONS AND UNIONS OF BAR ASSOCIATIONS

This section of the report outlines contact information of possible international institutions and Turkish authorities where readers of this report can get in touch to express their discomfort with the victimization of lawyers in Turkey.

A. International Institutions

1. International Bar Association's Human Rights Institute (IBAHRI)

Headquarter	London, United Kingdom
Official Internet Website	https://www.ibanet.org
Email Address	iba@int-bar.org or member@int-bar.org
Phone and Fax Numbers	Phone: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091

2. Bar Human Rights Committee of England and Wales (BHRC)

Headquarter	London, United Kingdom
Official Internet Website	http://www.barhumanrights.org.uk
Email Address	coordination@barhumanrights.org.uk
Phone and Fax Numbers	Phone: +44 (0)7854 197862 Fax: +44 (0)207 404 1313 ext. 359

3. Foundation Judges for Judges (J4J)

Headquarter	Den Hagg, Netherlands
Official Internet Website	http://www.rechtersvoorrechters.nl
Email Address	info@rechtersvoorrechters.nl
Phone and Fax Numbers	Phone: +31(0)6 – 256 565 82 or + 31(0)6 – 256 565 59

4. Lawyers' Rights Watch Canada (LRWC)

Headquarter	Vancouver, B.C., Canada
Official Internet Website	https://www.lrwc.org
Email Address	lrwc@portal.ca
Phone and Fax Numbers	Phone: +1 (604) 736-1175 Fax: +1 (604) 736-1175

5. Law Society of England and Wales

Headquarter	London, United Kingdom
Official Internet Website	https://www.lawsociety.org.uk
Email Address	https://www.lawsociety.org.uk/get-in-touch/
Phone and Fax Numbers	Phone: +44 (0) 20 7242 1222 Fax: +44 (0) 20 7831 0344

6. The Union Internationale des Avocats or International Association of Lawyers

Headquarter	Paris, France
Official Internet Website	http://www.uianet.org/en
Email Address	http://www.uianet.org/en/contact
Phone and Fax Numbers	Phone: (+33) 1 44 88 55 66 Fax: (+33) 1 44 88 55 77

7. American Bar Association

Headquarter	Chicago, Illinois
Official Internet Website	https://www.americanbar.org/aba.html
Email Address	https://www.americanbar.org/about_the_aba/contact.html
Phone and Fax Numbers	Phone: 202-662-1000 or 800-285-2221 or 312-988-5000

8. The American Association for Justice

Headquarter	Washington, D.C., U.S.A.
Official Internet Website	https://www.justice.org
Email Address	https://www.justice.org/contact-us
Phone and Fax Numbers	Phone: 800.424.2725 or 202.965.3500

9. National Lawyers Association (NLA)

Headquarter	Kansas City, MO, U.S.A.
Official Internet Website	https://www.nla.org
Email Address	info@nla.org
Phone and Fax Numbers	Phone: (844) 917-1787

10. The Cape Law Society

Headquarter	Cape Town, Republic of South Africa
Official Internet Website	http://capelawsoc.law.za
Email Address	cls@capelawsoc.law.za
Phone and Fax Numbers	Phone: (+27) 27 21 443 6700 Fax: (+ 27) 21 443 6751/2

B. Turkish Authorities

1. Republic of Turkey, Prime Ministry

Official Internet Website	https://www.basbakanlik.gov.tr/Forms/pg_Ma in.aspx & https://www.bimer.gov.tr
Email Address	
Phone and Fax Numbers	Phone: +90 (312) 403 50 00 +90 (312) 422 10 00 Fax: +90 (312) 422 26 67

2. Republic of Turkey, Justice Ministry

Official Internet Website	http://www.adalet.gov.tr
Email Address	info@adalet.gov.tr
Phone and Fax Numbers	Phone: +90 (0312) 417 77 70 Fax: +90 (0312) 419 33 70

3. Union of Turkish Bar Associations

Official Internet Website	https://www.barobirlik.org.tr
Email Address	barobirlik@barobirlik.org.tr
Phone and Fax Numbers	Phone: +90312 292 59 00 (Pbx) - Fax: +90 312 286 31 00

4. Presidency of the Constitutional Court

Official Internet Website	http://www.anayasa.gov.tr
Email Address	bilgi@anayasa.gov.tr
Phone and Fax Numbers	Phone: 312 463 73 00 Fax: 312 463 74 00

5. Court of Cassation

Official Internet Website	https://www.yargitay.gov.tr
Email Address	iletisim@yargitay.gov.tr
Phone and Fax Numbers	Phone: +90 (312) 416 10 00 General Public Prosecutor's Office/ Yargıtay Cumhuriyet Başsavcılığı: +90 (312) 573 35 00

6. Presidency of the Council of State

Official Internet Website	http://www.danistay.gov.tr
Phone and Fax Numbers	Phone: 0(312) 253 10 00 0(312) 253 10 01