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## Türkiye

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Fourth Cycle of the United Nations Human Rights Council's Universal Periodic Review

**Joint Stakeholder submission to the United Nations Human Rights Council's Universal Periodic Review, submitted on 11 October 2024.**

### **Information on the submitting organisations**

**The International Bar Association's Human Rights Institute (IBAHRI)** was established in 1995 under the honorary presidency of emblematic human rights defender, the late Nelson Mandela, and works with the global legal community and partner civil society organisations to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI is a substantively autonomous entity within the International Bar Association, the world's leading organisation of international legal practitioners, bar associations and law societies, with over 80,000 individual lawyers, and 190 bar associations and law societies across more than 160 countries. Under the IBAHRI's By-Laws, the Institute is governed by an independent Council and is under the Directorship of Baroness Helena Kennedy LT KC.

**The Arrested Lawyers Initiative (TALI)** is a Brussels-based rights group consists of lawyers making advocacy to ensure lawyers and human rights defenders perform their duty without fear of intimidation, reprisal and judicial harassment. TALI is a member of the International Observatory for Lawyers.

## **I. Introduction**

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1. Türkiye was reviewed by UPR WG 35, in January 2020. It received 321 recommendations, and it supported 216 recommendations at the adoption of its UPR outcome at Human Rights Council 45.<sup>1</sup>
2. In the following three chapters, this submission will explain that Türkiye failed to implement recommendations that it supported.
3. We should underline that these are not the only recommendations that Türkiye failed to implement yet focused on those most relevant in keeping with the word count.

## **II. Lack of independence of the judiciary**

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### **a) Relevant Recommendations**

4. Relevant recommendations that Türkiye failed to implement despite its support in the previous UPR cycle:
  - 45.113 Guarantee an independent and impartial judiciary and ensure respect for the separation of powers (Austria);
  - 45.120 Guarantee the independence and impartiality of the judiciary in law and in practice (Costa Rica);
  - 45.124 Reform the judicial system and ensure independent and impartial investigation, prosecution and trial (Finland);
  - 45.128 Pursue judicial reform by strengthening the independence of the judiciary (Albania);
  - 45.129 Strengthen the independence of the judiciary (Italy);
  - 45.133 Strengthen the independence of the judicial system and follow due judicial process according to Turkey's international obligations and standards (Norway).

### **b) Evaluation**

5. A 2023 European Commission report found that “Serious backsliding continued and, despite several judicial reform packages in recent years, the structural deficiencies in the judicial system remained unaddressed. The continued refusal to implement certain rulings of the European Court of Human Rights (ECtHR) remains a matter of concern. There was no progress in eliminating undue influence and pressure by the Executive on judges and prosecutors, which negatively affects the independence, impartiality, and quality of the judiciary. Implementation of the 2021 Human Rights Action Plan (HRAP) and the 2019 Judicial Reform Strategy (JRS) continued, but the activities foreseen in these documents fell short of addressing the structural problems and issues identified in the previous reports of the European Commission. The lack of objective, merit-based, uniform, and pre-established criteria for recruiting and promoting judges and prosecutors remains a source of concern.”<sup>2</sup>

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<sup>1</sup> OHCHR, [t.ly/CCh0Z](https://t.ly/CCh0Z)

<sup>2</sup> European Commission, Türkiye Report 2023, [t.ly/X2IIX](https://t.ly/X2IIX)

6. The report also found that “Although the principle of separation of powers and judicial independence is enshrined in the Constitution and other legislative provisions, there are strong concerns regarding political influence on the judiciary. The HRAP included some actions to improve the independence of the judiciary, but these actions have not been implemented. High-level officials and representatives of the executive (including the President) continued to comment publicly on ongoing judicial cases, thus undermining judicial independence. They also publicly criticised ECtHR and Constitutional Court case rulings. Lower courts at times ignored or significantly delayed the implementation of decisions reached by the Constitutional Court. The non-implementation of the administrative courts’ decisions by the administration also remains an issue of concern. Individual applications to the Constitutional Court had limited effect, especially with regard to politically motivated trials.”<sup>3</sup>
  
7. In 2021, Amnesty International stated that “The Human Rights Action Plan fails to incorporate any concrete action as well as general measures to ensure compliance with the international human rights framework and to address major rights violations that have been frequently highlighted by the Council of Europe bodies and other human rights mechanisms, such as the use of excessive force in dispersing peaceful demonstrations, the ineffectiveness of investigations into deaths, torture and other ill-treatment by members of security forces, arbitrary arrests and pre-trial detention, including those of journalists; or the composition of the Council of Judges and Prosecutors (CJP), which in large part facilitates the control and political influence of the executive over the judiciary thus leading to the authorities bringing politically motivated charges, grossly unfair trials, convictions and sentences. More importantly, the Plan does not elaborate on any structural changes brought to the composition and the procedure for appointing members of the CJP by the 2017 Constitutional amendments which are in conflict with the principle of independence and the impartiality of the judiciary as they enable the executive power to exert political influence over the Council and to interfere with criminal proceedings. The Human Rights Action Plan, which does not address the major shortcomings of human rights protection in Türkiye, is substantially a missed opportunity. The Plan fails to provide a comprehensive framework within which to reverse the deep erosion of human rights in Türkiye and does not go beyond the recognition of “protecting and promoting human rights as the principal duty of the State”. It remains a plan of precatory promises without addressing any significant and structural issues affecting the human rights and criminal justice system in Türkiye”.<sup>4</sup>
  
8. In 2024, Amnesty International said that “Amnesty International is concerned that the new legislative package, which is commonly known as the “8th Judicial Package,” falls short of human rights standards. The new package - as was the case with preceding reform proposals - continues to fail to address the most significant and structural/systematic issues at the root of the persistent erosion of human rights in Türkiye, including the breakdown of the rule of law and the independence of the judiciary. As the text stands, it also does not fully implement legal changes arising from key pertinent Constitutional Court rulings, in particular with regards to the amendments to the Article 220/6 of the Turkish Penal Code.”<sup>5</sup>

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<sup>3</sup> Ibid.

<sup>4</sup> <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

<sup>5</sup> <https://www.amnesty.org/en/wp-content/uploads/2024/03/EUR4477652024ENGLISH.pdf>

9. In 2021, Türkiye announced the Human Rights Action Plan. The plan, however, failed to incorporate any concrete action or any general measures to ensure compliance with the international human rights framework and to address major rights violations that have been frequently highlighted by the Council of Europe's bodies, including the composition of the CJP, which in large part facilitates the control and political influence of the Executive over the judiciary, thus leading to the authorities bringing about politically motivated charges, grossly unfair trials, convictions, and sentences.<sup>6</sup>
10. More importantly, the Plan did not elaborate on any structural changes that had been brought to the composition and the procedure for appointing members of the CJP by the 2017 Constitutional amendments, which conflict with the principle of the independence and impartiality of the judiciary as they enable the Executive power to exert political influence over the Council and to interfere with criminal proceedings. The Human Rights Action Plan, which did not substantially address the major shortcomings in human rights protection in Türkiye, is a missed opportunity. The Plan failed to provide a comprehensive framework to reverse the deep erosion of human rights in Türkiye.<sup>7</sup>
11. Within the scope of the plan, Türkiye passed eight omnibus laws that neither addressed the above-mentioned fundamental shortcomings nor did they result in improvements in human rights conditions in Türkiye.
12. More importantly, despite repeated calls from the Committee of Ministers of the Council of Europe, Türkiye has not reformed the structure of the CJP to ensure the independence and impartiality of the judiciary.<sup>8 9</sup>

### **Interference in Judicial Independence under the Council of Judges and Prosecutors (CJP)**

13. By a Constitutional Amendment, dated 16 April 2017, Türkiye's top judicial body was reshaped by the AKP Government. The new structure of the CJP has caused serious concern, in relation to the terms of its independence and the impartiality of the judiciary as a whole.
14. The Council of Europe's Human Rights Commissioner, Nils Muiznieks, expressed concern on June 7, 2017, about the new composition of Turkey's CJP, stating that it "does not offer adequate safeguards for the independence of the judiciary" and "increases the risk of it being subjected to political influence." With four members appointed directly by the President and seven by Parliament without ensuring the involvement of all political parties, nor by judges and prosecutors in the election process, the risk of political interference in the judiciary has grown.<sup>10</sup>
15. The Commissioner also warned that the new system risks turning Turkey into a one-person presidential system, undermining judicial independence. Nearly half of the members of the new CJP are appointed by the President, with the rest appointed by Parliament, which—given the ruling party's likely dominance—compromises the judiciary's independence. The

<sup>6</sup> <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

<sup>7</sup> <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

<sup>8</sup> <https://search.coe.int/cm?i=0900001680aa75d1>

[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1475/H46-39E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1475/H46-39E)

[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1459/H46-26E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1459/H46-26E)

<sup>9</sup> CM/Del/Dec(2024)1507/H46-37, 19/09/2024, <https://search.coe.int/cm?i=0900001680b192a0>

<sup>10</sup> <https://www.facebook.com/CommissionerHR/posts/806253422883903>

CJP, being responsible for judicial appointments, promotions, and disciplinary actions, is at risk of being politically controlled. This control over judges and prosecutors, especially given the frequent dismissals and transfers of judges, seriously endangers judicial independence.<sup>11</sup>

16. The Council of Europe’s Human Rights Commissioner, Dunja Mijatovic, after a five-day official visit to Türkiye said, on 21 December 2019, the following: “...*(T)he independence of the Turkish judiciary has been seriously eroded during this period, including through constitutional changes regarding the Council of Judges and Prosecutors which are in clear contradiction to the Council of Europe standards, and the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors...*”<sup>12</sup>
17. Since the attempted coup in 2016 and subsequent laws and regulations, the appointment and promotion of judges and prosecutors in Türkiye have faced significant political interference. By December 2023, the judiciary comprised 23,759 judges and prosecutors, with at least 12,000 recruited following the mass dismissal of officials after 2016.<sup>13</sup> Many of these newly appointed judges and prosecutors are viewed as being politically aligned with the ruling AKP government and its ally Nationalist Movement Party, often receiving promotions to higher courts and positions favorable to the government.<sup>14</sup>
18. The process for selecting and recruiting judges and prosecutors lacks transparency, with the Ministry of Justice overseeing the selection boards in the absence of the CJP. Annual evaluations are conducted by the CJP, but these assessments do not follow the objective, merit-based, standardized criteria established by Law No.2802 for recruitment and promotion. The rapid pace of recruitment has led to the appointment of judges who often lack the necessary skills and qualifications,<sup>15</sup> raising concerns about the independence of the Justice Academy and the quality of its pre-service training program.<sup>16</sup>

## **The Constitutional Court (TCC)**

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<sup>11</sup> Venice Commission. Opinion on The Amendments to The Constitution Adopted by The Grand National Assembly On 21<sup>st</sup> January, 2017, To Be Submitted To A National Referendum On 16 April, 2017. [t.ly/uPrqT](https://www.venice.gov.it/wp-content/uploads/2017/04/Opinion-on-the-amendments-to-the-constitution-adopted-by-the-grand-national-assembly-on-21-january-2017-to-be-submitted-to-a-national-referendum-on-16-april-2017.pdf)

<sup>12</sup> Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders, [t.ly/Ne-3N](https://www.venice.gov.it/wp-content/uploads/2019/12/Turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders.pdf)

<sup>13</sup> Council of Judges and Prosecutors, ‘CPJ Annual Report for 2023’ <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporupdf.pdf>> p 88.

<sup>14</sup> See statements of former Istanbul Bar Association President Mehmet Durakoğlu available at <<https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357>> ; and statements by former Court of Cassation prosecutor Ömer Faruk Eminapaoğlu available at <<https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akpnin-yargidaki-kadrolasmasinin-temeli-mulakatlar-402250>>.

<sup>15</sup> In 2018, an opposition MP presented a list of over 100 newly recruited judges and prosecutors who had held active roles within the ruling AKP party. See <<https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/>>

<sup>16</sup> Council of Judges and Prosecutors, ‘CPJ Annual Report for 2023’ <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporupdf.pdf>> p 88.

<sup>16</sup> European External Action Service, ‘Türkiye 2023 Report’ (8 November 2023) <[www.eeas.europa.eu/sites/default/files/documents/2023/SWD\\_2023\\_696%20Tu%CC%88rkiye%20report.pdf](https://www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf)>.

19. The Turkish Constitutional Court (TCC) was originally established in the 1961 Constitution to review the constitutionality of laws and decrees. This system was largely retained in the 1982 Constitution. Under the Justice and Development Party (AKP) government, two significant changes were made to the TCC in 2010 and 2017.
20. In 2010, the Court's composition was expanded, allowing the President and Parliament to appoint judges, increasing pluralism but raising concerns about Executive influence.
21. In 2017, the President of the Republic gained the power to appoint 12 out of 15 judges,<sup>17</sup> consolidating executive control over the judiciary, leading to concerns of political dominance over judicial independence.
22. The dominance of appointments by the President, and a Parliament often controlled by the same party, created a situation where the TCC could be influenced by a single political party. This raised fears about the erosion of judicial independence, exemplified by the refusal of the Court of Cassation to comply with TCC judgments,<sup>18</sup> undermining the legal system's credibility, especially regarding individual applications to the Constitutional Court.

### **III. Non-compliance with the judgments and opinions of European Court of Human Rights, the UN Treaty Bodies**

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#### **a) Relevant Recommendations**

23. Relevant recommendations that Türkiye failed to implement even though it supported in the previous UPR cycle:
- 45.121 Ensure respect for the rule of law and an independent judiciary and implement the decisions of the European Court of Human Rights (Czechia);
  - 45.20 Continue to review legislation in line with its commitments to international human rights obligations (Bosnia and Herzegovina);
  - 45.17 Further strengthen national capacities in the promotion and protection of human rights, taking into account the concluding observations of the treaty bodies and the recommendations of the universal periodic review (Belarus);

#### **b) Evaluation**

24. Türkiye is the only Council of Europe member state subject to infringement proceedings for failing to implement ECTHR judgments. In February 2022, the Committee of Ministers of the Council of Europe (CoE) decided to open infringement proceedings against Türkiye for its

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<sup>17</sup> IACL-AIDC Blog, "Does the Turkish Constitutional Court Provide Effective Remedies for Human Rights Violations?" [t.ly/zmwG](https://t.ly/zmwG)-

<sup>18</sup> Turkut, Emre; Yildiz, Ali: *The Individual Application Mechanism is on the Verge of Collapse, and so is Turkish Constitutionalism*, *VerfBlog*, [10.59704/55748468371d0f88](https://doi.org/10.59704/55748468371d0f88)

refusal to implement the 2019 judgment of the European Court of Human Rights (ECTHR) and immediately release Osman Kavala.<sup>19 20</sup>

25. In the Kavala judgment, the ECtHR established that the applicant's detention "pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considers that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders. In consequence, it concludes that the restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention." (para.232). Following repeated non-compliance with the ECtHR's ruling in releasing Kavala, Türkiye was subjected to an infringement procedure by the Council of Europe in 2022.

26. Türkiye is also one of the member states with the highest number of leading and repetitive cases pending for execution, which means that it fails to take general measures to prevent the recurrence of similar violations. According to the ECTHR 2023 report, Türkiye has the highest number of pending applications, with 23,397 out of a total of 68,468.<sup>21</sup> This represents more than a third of all applications to the Court, highlighting the significant number of Turkish nationals seeking justice from the continent's highest court amid repeated accusations that Turkish authorities are undermining the rule of law.

27. Türkiye has failed to comply with the opinions of the UN Human Rights Committee in Mukadder Alakus (3736/2020) and İsmet Özçelik (2980/2017). It also failed to comply with the opinions of the WGAD which found imprisonments of members of the Gülen movement for using the Bylock app or for membership of those organisations that were closed down by Emergency Decree, or for participation in Sohbet and other peaceful gatherings, to be unlawful and a Category V violation.

28. Mukadder Alakus is significantly important as the UN Human Rights Committee (Mukadder Alakus) established that Article 314 of the Penal Code breaches the principle of no punishment without law, Türkiye has continued to arrest and convict, in total, more than 300,000 people under this provision.

29. Additionally, the use of vague and broad terrorism charges has led to widespread misuse in its application, with the Special Rapporteur on the Situation of Human Rights Defenders stating that *'Article 314 of the Turkish Penal Code and Article 7 of the Anti-Terror Law relating to leaders and members of armed organisations are being used to convict human rights defenders and sentence them to lengthy prison sentences.'*<sup>22</sup>

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<sup>19</sup> <https://www.hrw.org/news/2022/02/02/turkey-council-europe-votes-infringement-process>

<sup>20</sup> <https://hudoc.echr.coe.int/eng?i=001-199515>

<sup>21</sup> <https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng>

<sup>22</sup> <https://www.ohchr.org/en/press-releases/2021/06/turkey-stop-mis-using-law-detain-human-rights-defenders-urges-un-expert>

30. Despite the findings by the ECtHR in the cases of Selahattin Demirtaş (No. 2)<sup>23</sup>, Yüksel Yalçınkaya<sup>24</sup>, Mukadder Alakus (3736/2020) and İsmet Özçelik (2980/2017), Türkiye has not reformed Article 314 of the Penal Code, on the grounds of its vagueness. In the İsmet Özçelik (2980/2017) and Mukadder Alakus (3736/2020) cases, the UN Human Rights Committee underlined that “*The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future*” (§11 and §12, respectively). In the Yüksel Yalçınkaya Case, the ECtHR ordered Türkiye to take general measures to prevent similar findings and noted that there were potentially 100,000 complaints to be lodged with the Court. Türkiye, however, has since been continuing to commit similar human rights violations, which are also condemned in the opinions of the HRC and WGAD.

31. Last but not least, the Committee of Ministers of the Council of Europe which oversees the implementation of ECtHR judgments decided several times that Türkiye should “take all legislative and other measures to ensure independence of the judiciary, in particular by securing the structural independence of the Council of Judges and Prosecutors from the Executive” and stated several times it “deeply regretted once again the absence of any progress on this issue”<sup>25</sup>

#### **IV. Crackdown on the legal profession**

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##### **a) Relevant Recommendations**

32. Relevant recommendations, supported by Türkiye in the previous UPR cycle, that have been partially or not implemented:

- 45.98 Bring the Anti-Terrorism Law in line with international human rights standards and prevent the prosecution of journalists and human rights defenders for peacefully exercising their human rights (Denmark)
- 45.139 Cease the excessive use of pretrial detention, ensure human rights defenders and critics alleged to have committed an offence are guaranteed due process and fair trial rights, and strengthen the capacity of the judiciary to operate independently (Australia)
- 45.177 Ensure that human rights defenders, lawyers, and journalists are not subjected to intimidation or arbitrary arrest in undertaking their work (New Zealand)

##### **b) Evaluation**

#### **Summary of Concerns**

33. Since the attempted coup in 2016, the Turkish government has launched a sustained and systematic crackdown on the legal profession, targeting lawyers and bar associations. Arbitrary arrests, intimidation, and prosecution have become widespread, disproportionately affecting

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<sup>23</sup> <https://hudoc.echr.coe.int/eng?i=001-207173>

In the case of Demirtaş v. Turkey (2), the Grand Chamber of the ECtHR observed that “the range of acts that may have justified the applicant’s pre-trial detention in connection with serious offences that are punishable under Article 314 of the Criminal Code, is so broad that the content of that Article, coupled with its interpretation by the domestic courts, does not afford adequate protection against arbitrary interference by the national authorities.” (para. 280). It found that the terrorism-related offences at issue, as interpreted and applied in the present case, are not properly ‘foreseeable’ and do not ‘afford adequate protection against arbitrary interference by the national authorities’.

<sup>24</sup> <https://hudoc.echr.coe.int/eng?i=001-227636>

<sup>25</sup> CM/Del/Dec(2024)1507/H46-37, 19/09/2024, <https://search.coe.int/cm?i=0900001680b192a0>

lawyers representing politically sensitive clients. This campaign has utilized anti-terrorism laws with broad and ambiguous definitions to target lawyers, undermine judicial independence, and dismantle the independence of bar associations. As a result, over 1,700 lawyers have been prosecuted, with at least 553 sentenced to a total of 3,386 years in prison.<sup>26</sup>

34. In addition, there have been numerous documented instances of torture and ill-treatment of detained lawyers, as well as significant government interference in the independence of bar associations. These actions violate Türkiye's obligations under international human rights law, including the UN Convention Against Torture (UNCAT), and erode the very foundations of democratic governance.<sup>27</sup>

### **Arbitrary criminal prosecutions**

35. Since the failed coup attempt in 2016, Turkish authorities have used anti-terrorism legislation, particularly Article 314 of the Turkish Penal Code, to prosecute lawyers. This law's overly broad and ambiguous definitions of terrorism enable the arbitrary classification of legitimate legal activities as terror-related, facilitating mass prosecutions. Lawyers have been charged with offenses such as "membership in an armed terrorist organization," often with insufficient or no evidence, as a result of authorities identifying lawyers with their client's cases, in violation of Article 18 of the UN Basic Principles on the Role of Lawyers.<sup>28</sup>

36. Additionally, under Turkish law, specifically Law No. 1136 (the Code of Lawyers), lawyers can only be prosecuted under special procedures that require authorization from the Ministry of Justice. These procedures are designed to protect lawyers from arbitrary interference in their professional duties. However, these protections have been ignored in the government's crackdown, with at least 1,700 lawyers arrested without the requisite authorization. Authorities have misused provisions, such as in flagrante delicto, which is meant to apply to ongoing criminal acts, to bypass these protections, in contravention of the safeguards provided in the Articles 58-62 of Law No. 1136.<sup>29</sup>

### **Use of Vague and Overly Broad Anti-Terror Laws**

37. Türkiye's anti-terrorism legislation primarily includes the Turkish Penal Code No. 5237 (TPC) and the Anti-Terror Law No. 3713. Article 314 of the TPC criminalises leading, establishing, or membership in an armed terrorist organization, with penalties ranging from 7.5 to 22.5 years of imprisonment.<sup>30</sup>

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<sup>26</sup> IBAHRI and TALI, 'A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey' (14 February 2024) <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.

<sup>27</sup> IBAHRI and TALI, 'A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey' (14 February 2024) <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.

<sup>28</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

<sup>29</sup> Yildiz, Ali: *Continuing Violation: The Legality of Mass Arrests of Lawyers in Turkey*, *VerfBlog*, 2020/9/28, <https://verfassungsblog.de/continuing-violation/>,

<sup>30</sup> Article 314 (1) Any person who establishes or commands an armed organisation with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years. (2) Any person who becomes a member of the organisation defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years. (3) Other provisions relating to the forming of an organisation in order to commit offences shall also be applicable to this offence. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)011-e)

38. Additionally, the TPC outlines offenses related to acting on behalf of, or aiding, a terrorist organization without formal membership. The lack of a clear definition for an "armed organization" under Article 314 makes it vulnerable to arbitrary enforcement, placing lawyers and human rights defenders at significant risk while performing their duties.

39. Following the 2016 state of emergency, 34 lawyers' associations were arbitrarily shut down by decree laws<sup>31</sup> on the grounds of alleged affiliation to a "terrorist organisation".<sup>32</sup> State authorities confiscated the assets of the associations without any compensation, and initiated prosecutions against their members.<sup>33</sup> Lawyers are frequently associated with their clients' causes and face similar charges, often related to membership of an armed organisation, in violation of Principles 16 and 18 of the UN Basic Principles on the Role of Lawyers. Those accused of terrorism-related offenses also face a reversed burden of proof, contradicting Article 14(2) of the ICCPR. Procedural changes further undermine fair trials, with convictions often based solely on witness testimonies or vague evidence reused across multiple cases.

40. In 2020, the ECtHR found that Turkish judicial authorities often interpret Article 314 overly broadly, conflating lawful exercise of freedom of expression with membership or leadership of an armed group, often "*on the basis of very weak evidence*" and that such interpretation by domestic courts does not afford adequate protection against arbitrary interference by the national authorities.<sup>34</sup>

41. More recently, the arbitrary application of counterterrorism legislation has been used to target other protected groups, including children. In May 2024, forty one defendants were detained, mostly consisting of university students, and included 14 minors. In the ongoing case, application of Article 314 of the TPC has been used to classify ordinary social activities as terrorism-related acts, including tutoring English classes, attending religious classes, and playing sports; violating the principle of legality and presumption of innocence, as well as protections afforded under the Convention on the Right of the Child<sup>35</sup> and Türkiye's Law. 5395 (the Juvenile Protection Law).<sup>36</sup> This case recalls the ruling of the ECtHR in the case of Yüksel Yalçinkaya v. Turkey, where the court found that the vague and broad use of Article 314 on social-religious activities was arbitrary and unlawful in nature.<sup>37</sup>

### **Conviction of Lawyers in a Deliberate Disregard of Yüksel Yalcinkaya Ruling of ECTHR**

42. The European Court of Human Rights (ECtHR) has repeatedly condemned Türkiye's misuse of anti-terrorism legislation. In the landmark 2023 case of Yüksel Yalcinkaya v. Türkiye, the Grand Chamber ruled that Article 314's vague and overbroad application violated the principle of legality and was inconsistent with the requirements of a democratic society. The

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<sup>31</sup> UN General Assembly, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers' (5 September 2018) A/73/365 (hereafter 'Report of the SRIJL') para 36.

<sup>32</sup> UN Office of the High Commissioner for Human Rights, 'Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East' (March 2018), para 9 <[https://www.ohchr.org/sites/default/files/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)>.

<sup>33</sup> UN General Assembly, 'Report of the SRIJL' (5 September 2018), A/73/365, para 36.

<sup>34</sup> *Selahattin Demirtaş v. Turkey* (No. 2), no. 14305/17 (ECtHR, 22 December 2020), paras 278-280.

<sup>35</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>36</sup> <http://www.lawsturkey.com/law/juvenile-protection-law-5395>

<sup>37</sup> <http://opiniojuris.org/2023/12/19/yuksel-yalcinkaya-v-turkiye-systemic-violations-of-the-nullum-crimen-nulla-poena-sine-lege-principle-in-a-founding-member-of-the-council-of-europe/>

Court emphasized that the law lacked foreseeability, thereby enabling arbitrary prosecution and significantly undermining legal certainty.<sup>38</sup>

43. According to the ECtHR, this judgment affects more than 8,000 pending cases and 100,000 potential cases linked to convictions under Article 314 of the TPC.<sup>39</sup> One of those 100,000 potential case was that of mass-trial of lawyers in Ankara in which lawyers have been accused of terrorism for identity of their clients, membership to the Law and Life Association and using ByLock app. However, in total disregard of the ECtHR's Yüksel Yalcinkaya ruling, the Ankara Regional Appeal Court on 23 December 2023 sentenced 19 lawyers to more than 125 years, cumulatively, for conducting their legitimate professional activities.<sup>40</sup> The court stated that Yüksel Yalcinkaya case concerns only the applicant in that case, and does not apply its case against lawyers. This is illustrative of Türkiye's refusal to implement ECtHR judgments, in breach of its obligations under Article 46 of the ECTHR.<sup>41</sup>

### **Torture and other Cruel, Inhumane or degrading Treatment or Punishment of Lawyers**

44. Several lawyers have reported being subjected to torture and ill-treatment while in detention, and during transfers between prisons.<sup>42</sup> This constitutes a breach of Article 7 of the ICCPR and the UN Nelson Mandela Rules.<sup>43</sup> There have also been reports of a failure to carry out a prompt, impartial, thorough and effective investigation into these allegations, and to provide access to effective remedies, in breach of Articles 2(3) and 7 of the ICCPR.

45. There have been documented instances of torture and ill-treatment of lawyers during detention. For example, lawyer Erdem Semih Yıldız was detained and subjected to physical and psychological torture at the Ankara Police Headquarters. Yıldız, who represented defendants alleging torture, reported in his statement dated 12 March 2019 before the prosecutor that he himself was tortured while in police custody.<sup>44</sup> Similarly, lawyers M.D. and M.A. were tortured at Ankara Police Headquarters in the aftermath of the coup attempt. Despite filing criminal

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<sup>38</sup> Yüksel Yalçınkaya v. Türkiye, no. 15669/20 (ECtHR, 26 September 2023).

<sup>39</sup> Yıldız, Ali 'Strasbourg Weighs In On Political Persecution In Turkey' (*Verfassungsblog*, 31 October 2023) <<https://verfassungsblog.de/strasburg-weighs-in-on-political-persecution-in-turkey/>>. The court also ordered a retrial of the applicant and the adoption of general measures to prevent similar violations.

<sup>40</sup> The Arrested Lawyers Initiative, 'Ankara Appeal Court Defies ECHR, Sentences 19 Lawyers to 125+ years' (31 January 2024) <<https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/>>; and Ankara Regional Appeal Court's 22nd Criminal Chamber, 27 December 2023.

<sup>41</sup> Failure by the State to take necessary corrective action, such as a refusal by national courts to apply the ECtHR ruling, constitutes a failure to execute the judgment in accordance with Article 46. A failure to execute a ruling of the Court to which the State is party is a failure to implement the provisions of the treaty.

<sup>42</sup> 'Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings' (6-10 November 2023), <[https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report\\_Turkey\\_Final.pdf](https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf)>.

<sup>43</sup> Rule 82(1) of the Nelson Mandela Rules requires that prison staff shall not use force "except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director." Rule 43 also states that instruments of restraint must never be used as a sanction for disciplinary offences.

<sup>44</sup> <https://arrestedlawyers.org/2019/05/25/turkish-lawyer-who-represents-a-torture-victim-was-also-tortured-and-detained/>

complaints, these cases were dismissed by prosecutors, reflecting a systemic failure to hold perpetrators accountable for the alleged torture of prisoners.<sup>45 46</sup>

## **V. Conclusion and Recommendations**

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46. Türkiye's ongoing disregard for international human rights obligations, as demonstrated by its persistent non-compliance with European Court of Human Rights judgments, UN Treaty Body recommendations, and related mechanisms, reflects a fundamental failure to uphold the rule of law. Despite commitments made under the Universal Periodic Review (UPR), Türkiye has failed to comply with numerous recommendations that it had accepted in the previous cycle, including ensuring judicial independence and protecting human rights. Despite the establishment of the Human Rights Action Plan, Türkiye continues to struggle with structural deficiencies, including the lack of judicial independence, political influence over the judiciary, and misuse of anti-terrorism legislation to suppress dissent. These systemic issues, combined with documented human rights abuses against lawyers and the undermining of bar associations, severely compromise judicial integrity, erode public trust, and hinder effective protection of fundamental rights. Comprehensive reforms are urgently needed to restore judicial independence, ensure accountability, and safeguard the ability of the legal profession to operate without persecution, thereby preserving the democratic foundations of Turkish society.

### **Recommendations:**

1. Ensure Judicial Independence, particularly through the reform the Council of Judges and Prosecutors (CJP) to eliminate political influence and guarantee judicial independence, in line with international human rights standards.
2. End Arbitrary Detention of Lawyers, including by amending Article 314 of the Turkish Penal Code to prevent the misuse of anti-terrorism laws for prosecuting lawyers, ensuring that legitimate legal activities are not criminalized.
3. Strengthen Compliance with ECtHR Judgments through implementation of its rulings, including the immediate release of individuals like Osman Kavala, in compliance with Turkey's international obligations.
4. Prevent Torture of Legal Professionals. Investigate all allegations of torture and ill-treatment of detained lawyers promptly and impartially, ensuring accountability for perpetrators and compliance with the UN Convention Against Torture.
5. Safeguard the Role of Bar Associations and restore the independence of bar associations by ceasing government interference and reinstating the 34 associations arbitrarily shut down after the 2016 coup attempt.
6. Reform the Human Rights Action to address structural human rights deficiencies, such as executive control over the judiciary and the misuse of pre-trial detention.

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<sup>45</sup> <https://arrestedlawyers.org/2017/08/02/the-scream-of-tortured-turkish-lawyer/>

<sup>46</sup> <https://arrestedlawyers.org/2017/08/05/876/>