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Alternative Report to the United Nations Human Rights Committee for the review of Türkiye's 2nd periodic report

Submitted by Antalya Bar Association Human Rights Center

Antalya/TÜRKİYE
13 September 2024

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Introduction

This report was prepared by the Antalya Bar Association Human Rights Centre (*ABHRC*) and is a response to the Turkish Government's 2022 Report (*hereinafter referred to as the* "Government report") to the Human Rights Committee (*hereinafter referred to as the* "Committee") of the United Nations (UN) under the *International Covenant on Civil and Political Rights* (*Covenant*).

Antalya Bar Association was established in 1926 and is the 4th largest bar association in Türkiye in terms of the number of member lawyers. The ABHRC was established in 1998 to assist in the fulfillment of the duty to defend and protect the rule of law and human rights given to bar associations under Article 76 of the Attorneyship Law. Since then, ABHRC has been carrying out activities dedicated to monitoring and reporting human rights violations in its region, as well as programs for the training of lawyers on human rights issues.

Our alternative report aims to analyze the Government report in the light of some human rights standards and also to draw attention to the gaps, inconsistencies, and incompatibilities of it. Our report was prepared using a process monitoring methodology based on open-source research on Türkiye's human rights issues. We also considered the government's official statistics, policy and strategy documents, reports, and statements from national and international non-governmental organizations and national and international human rights NGOs. In addition, following the principle of "*primium non nocere*", ABHRC has avoided using personal names in this report as much as possible, except for names commonly known in public. In very limited cases, the names were included in the report after obtaining informed consent from the relevant persons.

Executive Summary

The ABHRC's alternative report provides a thorough assessment of the human rights situation in Turkey in response to the government report. It specifically focuses on human rights violations during and after the period following the State of Emergency (SoE) that was declared after the 2016 coup attempt.

The ABHRC states that many of the regulations introduced by the SoE Decree-Laws are contrary to fundamental human rights standards and violate Türkiye's international human rights obligations. The report raises serious concerns about the independence and effectiveness of the Human Rights and Equality Institution of Türkiye (HREIT) and criticizes the dysfunction of prison monitoring boards.

Regarding the prohibition of discrimination, it is emphasized that the current legal framework is insufficient, and there are serious gaps, especially in the fight against indirect discrimination and hate speech.

It is claimed that anti-terrorism measures can lead to violations of human rights due to legal uncertainty and arbitrary practices in the judicial system.

The report highlights different dimensions of significant threats to the independence of the judiciary. It expresses concerns about the changes in the structure of the Council of Judges and Prosecutors (CJP), as well as the arbitrary appointment of judges and prosecutors, which undermine judicial independence. The report also notes increasing pressure on the independence of lawyers and attempts to divide bar associations, posing a threat to the rule of law.

The ABHRC presents a series of recommendations for improving the human rights situation in Türkiye. These recommendations include strengthening the HREIT as a national prevention mechanism and prison monitoring boards, establishing a comprehensive legal framework to combat discrimination, bringing anti-terrorism measures in line with the principles of legal certainty and respect for human rights, and guaranteeing the independence of the judiciary and the independence of lawyers.

List of Abbreviations

Abbreviation	Unwind
ABHRC	Antalya Bar Association Human Rights Center
ATL	Anti-Terror Law
CC	Constitutional Court
CCP	Code of Criminal Procedure
CJP	Council of Judges and Prosecutors
CoE	Council of Europe
Committee	United Nations Human Rights Committee
Covenant	United Nations International Covenant on Civil and Political Rights
Decree	Legislative Decree
ECHR	European Covenant on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
FETO	Fettullahist Armed Terrorist Organization
GNAT	Grand National Assembly of Turkish
HRA	Human Rights Association
HREIT	Human Rights and Equality Institution of Türkiye
NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PKK	Kurdistan Workers' Party
PLA	Progressive Lawyers Association
SoE	State of emergency
TPC	Turkish Penal Code
UN	United Nations
Venice Commission	Council of Europe European Commission for Democracy through Law

OPINIONS, EVALUATIONS, AND RECOMMENDATIONS OF THE ANTALYA BAR ASSOCIATION HUMAN RIGHTS CENTRE (ABHRC) AGAINST THE GOVERNMENT REPORT UNDER THE 2ND MONITORING CYCLE OF CONVENTION

A. MEASURES TAKEN BY THE GOVERNMENT FOR THE IMPLEMENTATION OF THE COVENANT

A.1. General situation of human rights in Türkiye

(1). Türkiye is going through a turbulent period shaken by a deep political, economic, and systemic crisis that began in 2013 and peaked in the failed coup attempt in July 2016. Immediately after the failed coup attempt, the Turkish Government declared a SoE and informed the UN Secretary-General that it had derogated its obligations under Article 4 of the Covenant, effective from 2 August 2016.[1] Following the declaration of SoE, the Government implemented a series of highly inappropriate and disproportionate measures. All of these measures are questionable in light of the requirement that they be "strictly required by the exigencies of the situation", in the sense of Article 4 of the Covenant. Concerns have been expressed in human rights circles about the horror atmosphere created, especially the dismissal and arrest of a large number of judges and prosecutors without applying their occupational safeguards.[2] As a result, the SoE, which was extended 7 times in three-month periods, lasted until July 2018, and during this period, it was put into effect with 32 SoE Decrees, bypassing the review of the Grant National Assembly of Türkiye (GNAT) and the Constitutional Court (CC).[3] The vast majority of these SoE Decrees contain provisions that contradict basic human rights standards and violate Türkiye's fundamental obligations in this regard.[4]

(2). In April 2017, a referendum in Türkiye approved 18 constitutional amendments that significantly expanded the powers of the executive branch of the Government. These amendments allow the President of the Turkish Republic to expand his influence over the legislative and judicial powers. As a result of this, the President has started to use the

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[1] For Türkiye's derogation notification, see: https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf. For the critical article by Martin Scheinin, former United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism, as the scope of this declaration is likely to expand, especially to rights and freedoms of an irreducible nature, see also "Türkiye's Derogation from Human Rights Treaties – An Update", 18/08/2016, https://www.ejiltalk.org/Türkiyes-derogation-from-human-rights-treaties-an-update/ (Accessed. 07/09/2024).

[2] Bkz., OHCHR: "UN human rights chief urges Türkiye to uphold rule of law in response to attempted coup", 19/07/2016, https://news.un.org/en/story/2016/07/534752 (Accessed. 07/09/2024).

[3] See, Euronews: "Extended 7 times, lasted 2 years: the balance sheet of the state of emergency", 18/07/2018, https://tr.euronews.com/2018/07/18/7-kez-uzatildi-2-yil-surdu-ohal-in-bilancosu (Accessed. 07/09/2024).

[4] Bkz., OHCHR: "Report on the impact of the state of emergency on human rights in Türkiye, including an update on the South-East – January – December 2017", March 2018, § 4.

possibility of enacting laws and making appointments within the judiciary, bypassing the Parliament and the oversight procedures within the judiciary.

(3). Before the referendum[5], the warnings from the UN circles about the drawbacks of holding a referendum without lifting the SoE were not taken into account by the Government. In its review of these amendments, the Council of Europe's (EC) European Commission for the Rule of Law through Democracy (Venice Commission) found that the proposed amendments would result in a system in which the separation of powers and the independence of the judiciary were not guaranteed, thus *introducing "a presidential regime that lacks the checks and balances necessary to protect against authoritarianism*".[6] On the other hand, the concerns of the human rights circles were not taken into account and the referendum took place under unequal competition conditions in which the society was deprived of the opportunity for healthy information and free public discussion,[7] and constitutional amendments were enacted with an unqualified public support of 51%.

(4). As a result of the general deterioration in the situation of fundamental rights and freedoms in Türkiye, as explained above, due to the Government's persistent resistance to not fulfilling its decisions in the cases brought before the European Court of Human Rights (ECtHR), Türkiye[8] was placed under review for the second time in its history under the "monitoring procedure" by the decision of the Parliamentary Assembly of the Council of Europe (PACE). As of 2024, there is no improvement in the current situation of this audit procedure. It is still ongoing.

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5 Bkz., "State of emergency must be lifted for 'credible elections' in Türkiye, says UN rights chief", https://news.un.org/en/story/2018/05/1009232 (Erişim: 15/08/2024); ayrıca bkz., The UN experts (Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights ; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Ms. Koumbou Boly Barry, Special Rapporteur on the right to education) of joint Press Release: "Ahead of referendum, UN experts warn Türkiye about impact of purge on economic, social and cultural rights", 13/04/2017, https://www.ohchr.org/en/press-releases/2017/04/ahead-referendum-un-experts-warn-Türkiye-about-impact-purge-economic-social (Accessed. 07/09/2024).

6 Council of Europe – Venice Commission: "Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January and to be submitted to a national referendum on 16 April 2017", 13 March 2017, CDL-AD(2017)005, §130; ayrıca bkz., HCHR Zeid: "Türkiye's 18-month state of emergency has led to profound human rights violations – UN report", 20/03/2018, https://news.un.org/en/story/2018/03/1005442 (Accessed. 07/09/2024).

7 AGİT'in referandum gözlem raporu için bkz., "OSCE/ODIHR final report on Türkiye's constitutional referendum recommends reviewing legal framework to secure fundamental rights and freedoms". 17 June 2017. https://www.osce.org/odihr/elections/Türkiye/324806. (accessed: 29/08/2024); See also Parliamentary Assembly of the Council of Europe, "Türkiye's constitutional referendum: an unlevel playing field", 17/04/2017, https://pace.coe.int/en/news/6596/Türkiye-s-constitutional-referendum-an-unlevel-playing-field (Accessed. 07/09/2024).

8 Bkz.,AKPM: "The functioning of democratic institutions in Türkiye", Resolution 2156 (2017), https://pace.coe.int/en/files/23665. (Accessed: 15/08/2024).

B. VIEWS OF THE ABHRC ON THE IMPLEMENTATION OF CERTAIN ARTICLES OF THE COVENANT

B.1. The constitutional and legal framework in which the Covenant applies (Art.2 and 26)

B.1.a. Human Rights and Equality Institution of Türkiye (HREIT)

(5). HREIT was established in 2016 to fulfill three separate tasks as a national prevention mechanism and an equality institution. In 2020, the post of national rapporteur on combating human trafficking was added to these duties. As such, the institution is obliged to fulfill four tasks that require experience and knowledge in different fields of expertise.

(6). The ABHRC wants to emphasize that the Government's report claiming that the HREIT is a public legal entity with its budget and independent administrative and financial autonomy does not align with the current facts. According to Law No. 6701, which outlines the principles regarding the establishment, duties, powers, and working procedures of the HREIT, all 11 members of the decision-making body, including the chairman and the deputy chairman, are appointed by the President.[9] Additionally, actions such as opening affiliated offices and preparing their working regulations can only be done with the approval of the President of the Republic. [10] This indicates that the HREIT has failed to meet the standards of the Paris Principles.[11] The ABHRC also would like to state that the establishment law of the Authority does not specify any criteria, such as professional competence and experience in relevant fields, for eligibility to the board members. As a result, the majority of appointed members are male, with professional backgrounds in senior positions in the public bureaucracy.[12] The ABHRC also wants to emphasize that this lack of diversity in the board membership hinders its ability to make independent decisions from the executive power and understand the broader society. This situation also leads to a lack of *de facto* independence.

(7). It is also impossible for the HREIT to adequately fulfill its duty to prevent torture and ill-treatment, which is one of its main responsibilities. In particular, the HREIT does not have a budget that is separate from the general budget and suitable for meeting its

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9 See, Article 10 of the Law No. 6701 on Human Rights and Equality Institution of Türkiye.

10 Article 14§5 of the HREIT Law No. 6701 states that "When deemed necessary and upon the proposal of the Authority, offices affiliated to the Authority may be established by the decision of the President of the Republic of Türkiye.".

11 Bkz, "As a Human Rights Protection Mechanism: The Cases of the Ombudsman and Human Rights Equality Institution of Türkiye, Association of Monitoring Equal Rights, https://www.esithaklar.org/wp-content/uploads/2022/05/ESHID-TIHEK-RAPORU-ENG_v2.pdf (Accessed: 19.08.2024).

12 See, the biographies of the majority of the members are published on the website of HREIT. Accordingly, only 2 of the 11 members of the decision-making body Board of Directors are women.

needs. It is noted that the organization does not have enough permanent employees with the necessary skills to effectively monitor over 10,000 indoor spaces nationwide for any violations.[13]

(8). Some provisions prevent the HREIT from fully fulfilling its duty as an equality institution. Among the grounds of discrimination prohibited by the HREIT Law, reasons for discrimination such as foreigners, gender, and sexual orientation are not included.[14] Therefore, the lack of a comprehensive list of grounds for discrimination in the HREIT Law has led to the exclusion of some vulnerable groups, especially foreigners and LGBTI+ individuals.[15] Article 3 of HREIT Law No. 6701 addresses the principle of equality and the prohibition of discrimination. However, Article 3 does not have a comprehensive list of the basis of discrimination or an open-ended formulation based on discrimination. This leads to interpreting discrimination based on an exhausted list (numerus clausus), which violates Article 10 of the Constitution. This gap, combined with the lack of appropriate selection criteria for the competencies and experience of the members of the Institution, leads to a discriminatory practice in the decisions of HREIT that is contrary to the raison d'être it. Public concerns have been triggered by the news about the predominance of homophobic attitudes among the board members, and the fact that it has gained a distinctly discriminatory character due to the ignoring of discrimination based on sexual orientation and gender in its decision-making policy and practice.[16]

(9). Finally, it should be noted that the CC's decision on the norm review examination regarding Decree-Law No. 703, which amended the establishment law of the HREIT in 2018 just before the transition to the new government system, was published in the Official Gazette dated 04/06/2024. In its judgment, finding Decree Law amendments of the HREIT Law unconstitutional, the CC revoked these amendments. In the concluding

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13 According to the financial reports published by the Authority, 75% of the budget allocated to the Authority consists of personnel expenses.

14 The fact that the reasons that constitute the basis of discrimination are listed one by one in Article 3 of the Law No. 6701, which is titled the principle of equality and the prohibition of discrimination, and that a formulation such as the phrase "similar reasons" in the text of Article 10 of the Constitution is not used, reveals that these reasons are foreseen in the number of consumers (numerus clausus).

15 In the "Anti-Discrimination and Equality 2021 Report" published by the Authority in 2023, no explanation was found on discrimination based on gender and sexual orientation (https://www.tihek.gov.tr/public/editor/uploads/ayrimcilikla_mucadelevesitlik_2021raporu.pdf (Accessed 20/08/2024).

16 On August 10, 2018, there were reports in the press that the application made to the Human Rights and Equality Institution of Türkiye (HREIT) was rejected on the grounds that "Sexual identity is not considered a basis for discrimination" after two trans women were not admitted to Ankara Cinnah Hotel (https://www.evrensel.net/haber/373360/HREIT-cinsel-kimligi-ayrimcilik-temelleri-arasinda-sCCadi). In the "2018-2019 Human Rights Evaluation Report" of the Istanbul Bar Association's Human Rights Center, it is stated that as a result of the administrative court lawsuit filed over the decision made by the HREIT, this decision was annulled on the grounds that "it is not in accordance with the law and at the same time, discrimination based on gender identity should be considered in the category of discrimination" (https://www.istanbulbarosu.org.tr/files/aihm/INSANHAKLARIDEGERLENDIRMERAPORU-2018-2019.pdf (Accessed 20/08/2024) The absence of a recent decision showing that the TCA still considers gender and sexual orientation as grounds for discrimination is the basis for the formation of a general opinion within the human rights movement in Türkiye that it is still composed of members with such an understanding.

part of its decision, the CC stated that some of the revoked provisions would enter into force on the date of publication of its decision, and gave 12 months to the Parliament to make new legal arrangements for some of them.[17]

B.1.b. Prison monitoring boards

(10). The purpose of these boards, which gained an institutional framework with the *"Law No. 4681 on Monitoring Boards of Penal Institutions and Detention Centers*" in 2001, is determined in Article 1 of the Law as "*to see and examine the management, operation, and practices of penitentiary institutions and detention centres on-site, to obtain information and to report their findings and submit them to the competent and relevant authorities*".

(11). The Establishment Law of these boards requires that monitoring reports be submitted periodically to various institutions, including the Ministry of Justice, the prosecutors' offices, the relevant execution judges, and the Presidency of the GNAT's Human Rights Investigation Commission. However, there is no requirement to share these reports with the public, and the relevant NGOs also do not have access to these reports. Additionally, the procedures for the selection of these board members, where to apply, and how unsuccessful applicants can appeal the decision are ambiguous, and mechanisms have not been established to enable effective applications. Furthermore, Decree-Law No. 673 dated 01/09/2016 stipulates that all board members should be dismissed from membership and re-election should be held, which directly targets the independence of these monitoring boards. These issues, along with others described above, render these boards incompatible with the Paris Principles.

B.1.c. Recommendations for HREIT and Prison Monitoring Boards

(12). The ABHRC has developed the following recommendations, hoping that the Committee will be taken into account:

- Taking into account the aforementioned CC judgment revoking the provisions of Law No. 6701 on the Establishment of HREIT as amended by the Decree-Law, the Government should implement the necessary amendments to Law No. 6701 within one year, under the Paris Principles;
- While this is being done, the HREIT should be completely cut off its ties from the executive branch and restructured as an institution affiliated with the legislature;
- Taking administrative and legal measures to make the Prison Monitoring Boards more independent;

[17] CC, E. 2018/117, K. 2023/212, 07./12./2023.

- Taking administrative and legal measures to ensure that, inter alia, human rights NGOs and Bar Associations can independently monitor prisons and other detention places;

B.2. Prohibition of discrimination (Articles 2, 3, 6, 25 and 26)

(13). Under this heading, the ECHR would like to point out that the legal framework for anti-discrimination measures outlined by the Government in its report is insufficient. First of all, *the fact that a general anti-discrimination framework law* has not yet come to the Government's agenda points to a fundamental deficiency in the fight against discrimination. A lack of awareness of which legislation that merely preaches the principle of equality would never be sufficient is a flawed part of the Government's report. In today's world, equal treatment in relations between disadvantaged and advantaged persons often means unequal and discriminatory treatment, and this form of discrimination (indirect discrimination) and anti-discrimination measures have not found a place in the Government's legislation in any way.

(14). Supporting and strengthening the status of women, children, people with disabilities, the elderly, individuals with gender identity and sexual orientation, foreigners, and minorities with ethnic, religious, or different lifestyles in the general population through legal, administrative, socio-economic or political measures is of vital importance in terms of guaranteeing the right not to be exposed to discrimination.

(15). In the following statements, the ABHRC focuses on making visible the gaps or inconsistencies in the legal framework put forward by the Government.

B.2.a. Provisions in the Constitution to guarantee the prohibition of discrimination

(16). In the report submitted by the Government, it referred to Articles 10, 68, and 70 of the Constitution regarding the prohibition of discrimination. These articles are generally intended to guarantee the right to equality and equal treatment before the law and provide limited protection against the prohibition of discrimination. It is an important deficiency that the text of Article 10 of the Constitution, which stipulates the principle of equality, excludes nationality or national or ethnic origin, gender, and sexual orientation in terms of the grounds of discrimination, although the CC has adopted an open-ended interpretation in its judgments to include many grounds of discrimination that are not explicitly listed in this article.[18]

(17). A more inclusive amendment would send a clear message to the public that people who are treated differently on these grounds are protected by the Constitution and the legal system as a whole. In terms of Article 70 of the Constitution, it should be emphasized that the principle of equality in recruitment to the civil service has not been

[18] See, European Commission against Racism and Intolerance (ECRI), Türkiye 5th Review Cycle report, CRI(2016)37, 04/10/2016, § 12.

implemented and the general composition of public officials is far from reflecting social diversity.

B.2.b. Discrimination in Labor Legislation

(18). In the government's report, it was stated that in terms of labor legislation, anti-discrimination measures are envisaged by referring to Article 7 of the Law on Civil Servants and the Labour Law, among others, without giving an article number. When viewed as a whole, it can be easily observed that both laws contain significant deficiencies for an effective fight against discrimination.

(19). Both Article 7 of the Law on Civil Servants (No. 657) and Article 5 of the Labour Law deal directly with discrimination and do not include indirect discrimination and other current forms of discrimination. Further, the grounds of discrimination listed in Article 5 of the Labour Law are limited to language, race, color, gender, disability, political opinion, philosophical belief, religion, and similar discrimination grounds. This list does not explicitly cover other important grounds of discrimination such as sexual orientation, gender identity, age, marital status, etc. On the other hand, there are significant inadequacies in terms of employers' positive obligations to prevent discrimination. Article 30 of the Labour Code provides for positive discrimination (special measures) limited only to disabled people, and to the security agencies members who are the victim of terrorism. On the other hand, there are no special measures that could cover many other disadvantaged groups such as women, Roma, LGBTI+ individuals, and ethnic minorities.

(20). Furthermore, the provision of Article 5 regarding the prohibition of discrimination applies to the determination and termination of the content and scope of the employment contract. Therefore, the exclusion of discrimination that may occur in recruitment processes such as job postings and interviews is another important shortcoming. There is an argument that Article 5 of the Labour Law also applies to recruitment. However, to date, the lack of any judgment from a labor court regarding Article 5, which would review the recruitment processes in practice, highlights this deficiency. The same deficiency applies to the interviews conducted in the absence of objective criteria, transparency, and accountability provisions in the Civil Servants Law, the Higher Education Law, and the Judges and Prosecutors Law in terms of the fulfillment of the principle of equality in participation in the public service. In addition, regarding the frequent occurrence of personalized job application advertisements in public sector recruitment,[19] there is a general opinion in the public that there is discrimination in interviews conducted in recruitment. As a result of this opinion, the President announced on 11/04/2023, that the interview will be abolished in public sector recruitment, except in cases of necessity

[19] https://www.diken.com.tr/secim-oncesi-universitelerde-adrese-teslim-kadro-ilanlari/; https://www.memur5.com/gaziantep-universitesi-nde-adrese-teslim-kadro-skandali/75655/ (Accessed 03/09/2024).

required by the job.[20] However, it is observed that this promise made before the 2023 Presidential elections has never been fulfilled.[21]

(21). To effectively prevent discrimination in the business environment, it is important to have specific regulations that define and prevent discriminatory practices in relevant legislation. Additionally, there should be procedural provisions for shifting the burden of proof in such cases. It is also essential to implement measures to prevent discrimination in the promotion of women and disadvantaged groups in their professional careers and their appointment to managerial positions.

(22). Finally, it should be noted that the Turkish Commercial Code does not include any regulation, especially in terms of equality and anti-discrimination obligations of companies.

B.2.c. Anti-discrimination provisions in the Criminal Code

B.2.c.i. In terms of Article 122 of the Turkish Penal Code (TPC), which criminalizes discrimination

(23). The ABHCR has confirmed that, as mentioned in the Government's report, the title of Article 122 of the TPC was changed from "discrimination" to "hatred and discrimination." However, the lack of a clear definition of the concepts in Article 122 is seen as a major obstacle to its proper implementation. In addition to this challenge, Article 122 does not include grounds for hatred based on ethnic origin, gender, and sexual orientation. Furthermore, it does not cover indirect discrimination, which is the most common form of discrimination.

(24). In order to establish the crime of hatred and discrimination as stipulated in Article 122, a special intention (*dolus specialis*) is required. This means that there is an additional structural challenge where the perpetrator must act to target and discriminate against a specific group. Proving this specific intention can be very difficult in concrete cases. It is believed that focusing on the consequences of discrimination rather than the special intent, as outlined in the general intention (*dolus generalis*), aligns more with human rights standards. Additionally, Article 122 is limited in scope as it only pertains to sanctioning economic activities with discriminatory motivation. This limitation fails to address various other forms of discrimination encountered in all areas of social life and thus confines the fight against discrimination to a very narrow scope. While Human Rights Law seeks to combat all forms of discrimination, Article 122 falls short of addressing this broad range.

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[20] https://teyit.org/vaat-kontrolu/kamuda-mulakatla-ise-alim-iktidarin-mulakati-kaldirma-vaadi-gerceklesti-mi. (Accessed 03/09/2024).

[21] Ibid, see also the text of the press release of the Office Workers' Union dated 24/06/2024, https://bes.org.tr/2024/06/28/adalet-bakanligi-onunden-seslendik-mulakat-emek-hirsizligidir-kaldirilsin/. (Accessed 03/09/2024).

B.2.c.ii. Legal measures against hate speech and discriminatory treatment

(25). There is no criminal regulation in Turkish law that explicitly prohibits hate speech. Article 216§1 of the TCP, which is titled "provoking the public to hatred and hostility or degrading", criminalizes provoking the public to hatred against "a segment of the public with different characteristics based on social class, race, religion, sect or regional difference", provided that the act in question poses a threat to public order. On the other hand, the exclusion of acts of incitement to violence and/or discrimination in the article is a very important deficiency.

(26). The Venice Commission has highlighted that paragraphs 2 and 3 of Article 216 respectively criminalize degrading a section of the population and religious values. The Commission considers these paragraphs problematic in terms of protecting freedom of expression because the broad interpretation of the verb "degrade" in these paragraphs leads to legal uncertainty and unpredictability. The Venice Commission suggests that a safeguard for freedom of expression should be included in paragraphs 2 and 3, similar to the requirement of "creating an explicit and imminent danger to public security" in Article 216§1.[22] This aligns with the jurisprudence of the ECtHR, which generally protects expressions that may be considered "offended, shocking, or disturbing" under Article 10 of the ECHR.[23]

(27). It is important to note the numerous examples of judicial harassment that demonstrate the misuse of clauses criticized by the Venice Commission. These clauses are often employed in a way that suppresses freedom of expression, distorting their intended purpose. For instance, the Ankara[24] and Izmir[25] bar associations criticize and the Ankara Bar Association also filed a criminal complaint against the President of Religious Affairs for making a statement that was deemed hate speech. This was in response to the Chairman of Religious Affairs' statement targeting LGBTI+ people and describing their existence as a "heresy contrary to the genesis."[26] The response of the judiciary to the statements made by the bar associations was scandalous. While the relevant public prosecutor's office declined to investigate the President of Religious Affairs regarding the complaint from the Ankara Bar Association,[27] the president and board members of the Ankara Bar Association were charged with insulting a public official (Art 125§3(a) of TPC).[28] Additionally, a criminal case was filed against the president and board members

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22 Bkz. Venice Commission: "Opinion on articles 216, 299, 301 and 314 of the Penal Code of Türkiye", (Venice, 11-12 March 2016), CDL-AD(2016)002-e, §§39-40.

23 See, e.g., ECTHR: among many other jurisprudence, *Handyside v. United Kingdom [BD]*, No. 5493/72, 07/12/1976, § 49.

24 https://www.diken.com.tr/barodan-diyanet-baskaninin-homofobik-soylemine-tepki-kadin-yakmaya-davet-etmesi-sasirtmaz/. (accessed 03/09/2024).

25 https://www.izmirbarosu.org.tr/HaberDetay/2032/nefrete-inat-yasasin-hayat (accessed 03/09/2024).

26 https://tr.euronews.com/2019/07/02/video-diyanet-isleri-baskani-erbastan-LGBTİ-aciklamasi-yaradilisa-aykiri-sapkinlik. (Accessed 03/09/2024).

27 https://bianet.org/haber/diyanet-isleri-baskani-icin-sorusturmaya-yer-yok-karari-224291. (Access 03/09/2024).

28 https://www.evrensel.net/haber/435588/ankara-barosu-baskani-ve-yonetim-kurulu-hakkinda-erbasa-hakaretten-iddianame (Access 03/09/2024).

of the Izmir Bar Association for publicly degrading religious values (Art 216§3of TPC).[29] Although both cases ended in acquittal in terms of all of the accused, because of the chilling effect of opening an investigation on freedom of expression remains a violation of freedom of speech.

(28). Finally, in addition to the other reports prepared by the Hrant Dink Foundation by scanning the weekday issues of all national newspapers and 500 local newspapers, the 2019 report found that hate speech was produced in the Turkish print media, more than 17 news articles and columns per day and that a total of 80 different ethnic, religious and national identities were targeted in these texts throughout the year and negative judgments about these identities were reinforced.[30] Unfortunately, it is unclear how many of these publications have been investigated under Article 216 and how many have led to prosecution, as the Ministry of Justice has stopped publishing comprehensive statistics categorized by types of crime. These reports clearly show the prevalence of hate and discriminatory speech spread by media outlets, indicating that hate speech is not being effectively combated as it should be.

B.2.c.iii. Lacking aggravating circumstance clauses in the TPC in terms of crimes committed with the motive of hatred

(29). In Türkiye, there is a long history of intentional killing and wounding based on hate motives.[31] The examples given in footnote no. 31 below are far from reflecting the whole picture, and it can be said that this phenomenon follows a much more frequent and widespread pattern and an escalation has been observed in lynching cases against immigrants and refugees, especially in recent times. In these cases, when investigating or prosecuting the perpetrators who can be found to be involved in the incident, the hate motive is not taken into account by the judicial authorities in any case due to the flawed structure of the legislation. According to the type of act, in Article 82 of the Turkish Penal Code, which regulates the aggravated cases of the crime of manslaughter, and in the crime of aggravated injury due to its result, Article 86§3, which also regulates the qualified

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30 See, Hrant Dink Foundation: https://hrantdink.org/tr/asulis/yayinlar/72-medyada-nefret-soylemi-raporlari/2665-medyada-nefret-soylemi-ve-ayrimci-soylem-2019-raporu.

31 See. Against Greek, Jewish and Armenian citizens for the events of 6-7 September 1955 against citizens belonging to minorities https://tr.wikipedia.org/wiki/6-7_Eyl%C3%BCl_Olaylar%C4%B1; Against citizens who are members of Alevite sects of Islam: the Maraş Massacre of 1978 against belonging Alevite citizens, see; https://tr.wikipedia.org/wiki/Mara%C5%9F_Katliam%C4%B1; In the recent period against citizens who are members of Kurdish ethnic origin, see, https://www.mazlumder.org/tr/main/faaliyetler/basin-aciklamalari/1/kurt-iscilere-is-yerlerine-evlerine-hdp-teski/12320; https://www.diken.com.tr/alanyadaki-irkci-saldirilarin-bilancosu-27-is-yeri-saldiriya-ugradi-11i-yakildi/; Roman citizens: see, https://bianet.org/haber/selendi-raporu-linc-ve-surgun-edilen-romanlar-huzur-bulamadi-168964; Immigrants and refugees For examples of lynchings and attempted lynchings, see: https://www.bbc.com/turkce/haberler-turkiye-58180854; https://tr.euronews.com/2021/12/22/izmir-de-3-suriyeli-gocmenin-yak-larak-oldurulmesi-ihd-tasarlanarak-rkc-saikle-yap-ld; https://bianet.org/haber/ihdden-kayseri-raporu-saldirilar-organize-297298; https://serbestiyet.com/serbestiyet-in-english/ozel-haber-antalyada-oldurulen-17-yasindaki-suriyeli-el-naif-ypgnin-elinden-kacip-turkiyeye-geldi-milliyetci-kiskirtma-sonucu-olduruldu-173178/#google_vignette.

cases of the crime of intentional injury, the motive of hatred due to discrimination is not listed among the aggravating reasons of the crime.

(30). While it is common for the homes, workplaces, or properties of the targeted disadvantaged groups to be destroyed, arson, or looted in such crimes, Article 152 of the TPC, which regulates the aggravated forms of the crime of property damage excluded hate related motivations. It should also be noted that in cases where the crime can be committed by a large number of people with an organized hate motive and if public officials are involved in the planning, administration, and/or facilitation of such an organized movement, the sanction to be applied to them is not foreseen as an aggravating circumstance for the hate motive. It was not considered a separate crime in the TPC that all of these actions were carried out to force the targeted people and groups to migrate from their places of residence due to discriminatory hatred.

B.2.d. Recommendations for combating discrimination

(31). In light of the foregoing, we submit to the Committee the following recommendations to the Government hoping that they will be adopted:

A. Constitution:

- The principle of equality in Article 10 of the Constitution should be expanded to include the prohibition of discrimination and made clearer and more inclusive by adding incomplete grounds of discrimination such as sexual orientation, gender identity, ethnicity and age;

B. Labour Law Legislation:

- The nondiscrimination provisions in the Labour Law and the Law on Civil Servants should be extended to include indirect discrimination and the inclusion of incomplete grounds of discrimination such as sexual orientation, gender identity, ethnicity, and age;
- The positive obligations in the Labour Law should not only be limited to the disabled and the security personnel who are the victims of terrorism but should also be extended to other disadvantaged groups such as women, Roma, and LGBTI+ individuals;
- Extending the provisions on the prohibition of discrimination in the Labour Law and the Law on Civil Servants to include recruitment and civil service admission processes, introducing objective criteria in recruitment interviews, and providing protective provisions to ensure transparency;
- In the Labour Law and the Law on Civil Servants, the current forms of discrimination, mobbing, and similar concepts are clearly defined, concrete measures to prevent and protect such acts are

envisaged, and comprehensive provisions are adopted regarding the sharing of the burden of proof in such cases and leaving it on the employer;

C. Criminal Law Legislation:

- A comprehensive reform of hate crimes should be made by removing the phrase "hatred" from Article 122 of the TPC, clearly defining the concept of "discrimination" and criminalizing indirect discrimination;
- Expanding Article 122 of the TPC to cover not only economic activities but also forms of discrimination that may be encountered in all areas of social life;
- Establishing a special monitoring mechanism in order to more effectively combat hate and discriminatory speech spread by media outlets and people with accounts on social media, providing deterrence through regulations to be made in criminal law to effectively punish hate speech by the media;
- Making amendments that accept the hate motive as an aggravating circumstance in crimes such as intentional killing and wounding and damage to property committed with hate motives.

D. General Recommendations:

- Enactment of a general framework law that comprehensively addresses the fight against discrimination;
- In order to combat discrimination more effectively, the HREIT Law should be subjected to a comprehensive revision to ensure that cases of discrimination are monitored and supervised by an independent institution specialized in the field of human rights;

B.3. Anti-terrorism measures (Articles 2, 4, 6, 7,9,14, 15 and 17)

B.3.a. Aspects of the government's counterterrorism measures that are incompatible with human rights standards

(32). The legislation governing Türkiye's fight against terrorism has faced criticism due to the ambiguity and unpredictableness of these legislations, especially during the SoE from 2016 to 2018. This ambiguity and unpredictableness have led to increased arbitrariness in practice, resulting in numerous human rights violations. These issues, stemming from legal regulations and judicial practices, undermine fundamental rights such as freedom of expression, assembly, and the right to a fair trial. As a result, the government has failed in its obligations to uphold international human rights and fundamental freedoms.

(33). The ABHRC would like respectfully to remind the Committee that there is no dispute in human rights law that the prevention of terrorism is part of the positive obligation of Governments to guarantee respect for the fundamental rights and freedoms of all within their jurisdiction.[32] However, this positive obligation cannot be used as a means of justifying arbitrary attitudes and human rights violations.[33] We would like to emphasize that the way to avoid such an excuse is to ensure that the anti-terrorism measures are under the law and that compliance with the law is to clearly define any restrictions on fundamental rights and freedoms in the legislation and to ensure that they are necessary and proportionate to the purpose pursued.[34]

B.3.a.i. Problems in terrorism legislation in terms of the principle of legal certainty

(34). At this point, Martin Scheinin, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism, emphasized that the main problem in combating terrorism measures within the framework of the law is that there is no generally accepted definition of terrorism among the nations, but the definition is left to the initiative of individual States. According to Scheinin, this ambiguity in national legal systems, where there is no precise and clear definition, opens the door to the misuse of the concept of terrorism to facilitate human rights violations, either intentionally or unintentionally, under the name of combatting terrorism. [35] To prevent abuses, the Special Rapporteur referred to UN Security Council resolution 1566 (2004) and proposed a model in which a minimum of three elements of this definition could be used, which refers to terrorism as acts that depend on three cumulative elements.[36]

(35). On the other hand, there are clear definitions that the Government can take as an example in terms of reviewing the definition of terrorism stipulated in the Anti-Terror Law No. 3713 (ATL). In Article 1 of the "Common Position Paper" of the Council of the

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[32] Adopted at the 804th session of the CoE Committee of Ministers on 11 July 2002: "Guiding Principles on human rights and the fight against terrorism - *Guidelines on human rights and the fight against terrorism*", H (2002) 4. Principle I of the Guiding Principles reads as follows: "*States are obliged to take the necessary measures to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies the fight of States against terrorism in accordance with existing principles.*"

[33] Principle II of the Guiding Principles, entitled "*Prohibition of arbitrariness*", reads as follows: "All measures taken by States in the fight against terrorism must respect human rights and the rule of law, exclude all forms of arbitrariness and any form of discriminatory or racist treatment, and be subject to appropriate supervision."

[34] See, e.g., Ibid., Principle III.

[35] For the report of Martin Scheinin, United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism, dated 28/12/2005, see, UN.Doc. E/CN.4/2006/98, §§ 28–38.

[36] Ibid. The Special Rapporteur enumerated the following elements: (a) the act amounts to killing or serious bodily injury or hostage-taking, including against civilians; (b). regardless of whether these acts of the perpetrators are committed with motives of a political, philosophical, ideological, racial, ethnic, religious or similar nature, but also with the intent to incite a state of terror in the general public or in a group of people or specific persons, to intimidate a population or to compel a Government or an international organization to commit or refrain from taking or refraining from taking any action; and finally (c). Such acts constitute a crime under international conventions and protocols on terrorism and as defined by them.

European Union dated 27 December 2001 on the implementation of special measures in the fight against terrorism, a definition of "terrorism" is given that is very suitable for ensuring legal certainty.[37] When compared with Article 1 of the ATL, it is observed that, unlike the definition of Article 1 of the ATL, the documents in question define terrorism as a direct act of violence and strictly related to the intention elements specific to terrorism.

(36). ABHRC would like respectfully to emphasize that according to Article 4§2 of the Covenant, any measure that might create an exception to the principle of legal certainty guaranteed in Article 15 of the Covenant is strictly prohibited, even during a SoE situation. Therefore, human rights law and the principle of the rule of law enshrined in the Covenant as a whole require that State parties must define terrorist acts as a crime in

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[37] Bkz., (European Union) European Council: "**Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism",** *Official Journal L 344 , 28/12/2001 P. 0093 – 0096. Paragraph 3 of Article 1 of the joint position paper reads as follows:*

"3. For the purposes of this Common Position Paper, a "terrorist act" is, taking into account its nature or context, capable of causing serious harm to a country or an international organisation and is defined as a crime under national law,

i. seriously intimidating a population, or

Ii. unfairly compel a government or international organization to take or refrain from taking any action, or

Iii. Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structure of a country or an international organization

If processed for the purposes of which it is committed, it means one of the following intentional acts:

a. attacks on a person's life that can lead to death;
b. attacks on the physical integrity of a person;
c. kidnapping or hostage-taking;
d. cause extensive destruction to a government or public facility, a transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property that is likely to endanger human life or cause major economic loss;
e. seizure of aircraft, ships or other means of transport of public or goods;
f. the production, possession, acquisition, transportation, procurement or use of weapons, explosives or nuclear, biological or chemical weapons, and the research and development of biological and chemical weapons;
g. the release or impact of hazardous substances causing fires, explosions or floods that would endanger human life;
h. interfere with or disrupt the supply of water, energy or any other essential natural resource, endangering human life as a result of this;
i. threatening to commit any of the acts listed in subparagraphs (a) to (h);
j. leading a terrorist group;
k. participating in the activities of a terrorist group, knowing that such participation contributes to the criminal activities of the group, including providing information or material resources or financing its activities in any way (...)

For the purposes of this paragraph, a "terrorist group" means a structured group consisting of more than two persons who have been established over a specified period of time and who have acted together to commit terrorist acts. "Structured group" means a group that is not randomly constituted for the immediate commission of a terrorist act and does not need to have formally defined roles, continuity of its membership, or a developed structure for its members."

an accessible, predictable, and narrowly defined manner. The same applies to the absolute protection of the right to freedom of expression guaranteed in Article 19§1 of the Covenant and also under Article 4, no derogation of these obligations is permitted. Furthermore, the right to freedom of expression in Article 19§2 is subject to broad interpretation and protects even expressions that can be considered extremely offensive.[38] Consequently, in the context of terrorism, any restriction on freedom of expression and the rights to peaceful assembly, which constitute a derivative of it, must comply with the requirements of international human rights law.

(37). Although the definition of terrorism in Turkish legislation is stipulated in Article 1 of the ATL, it has been a subject of fundamental concern and criticism in human rights circles since the beginning due to its ambiguous and broad interpretation that is suitable for opening the door to arbitrariness.[39] Under the international human rights treaties to which Türkiye is a party, international human rights mechanisms, have been expressing the deepest concerns for a long time with Articles 1 and 7§2 of the ATL, and Articles 314§§1-3 and 220§§ 6-7 of the TCP, on the grounds that this provision creates legal uncertainty and unforeseeability, and also serves to criminalize the exercise of fundamental rights and freedoms.[40]

(38). In this context, the ABHRC would like kindly to remind the Committee that Article 220§6 of the TPC has been revoked by the CC judgment because it is contrary to the principle of "certainty" and “foreseeability”[41] As part of an omnibus bill, the GNAT adopted Article 10 of Law No. 7499 on 02/02/2024, and a new version of Article 220§6 of the TPC was enacted without considering the reasons for the above-mentioned CC judgment. However, this change has not introduced any new elements to provide certainty and foreseeability of this.[42] The government's attitude, in the opinion of ABHRC, demonstrates clear contempt for the above-mentioned CC judgment, which is binding on

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[38] General Comment No. 32 of the Committee on Human Rights, § 11.

[39] We would like kindly to remind the Committee that during the evaluation of the first periodic report submitted by Türkiye to the Human Rights Committee, the Committee's concluding observations called on Türkiye to address the ambiguity of Türkiye's definition of a terrorist act and underlined concerns about the compatibility of this provision with the State's obligations under international law, See., A DOC. CCPR/C/TUR/CO/1, § 16. See also Report of the Special Rapporteur on the Protection and Promotion of Human Rights in the Fight against Terrorism, Martin Scheinin, Report on the Mission to Türkiye dated 16/11/2006, UN Doc. A/HRC/4/26/Add.2, § 14; Amnesty International: Public Statement on “*Türkiye: The draft revisions to tle Law to the Law to the Fight Terrorism are wide-ranging, arbitrary and restrictrive*", AI Index: EUR 44/010/2006. In its statement, Amnesty International criticized the fact that the broad and vague definition of terrorism in Article 1 of Law No. 3713 has not been changed since it was adopted in 1991, and that the definition was left the same in the 2006 amendment proposal.

[40] See, for relevant judgments of ECtHR: *Yavuz and Yaylalı v. Türkiye*, No. 12606/11, 17/12/2013, § 38; *Ahmet Husrev Altan v. Türkiye*, No. 13252/17, 13/04/2021; *Bakır and Parmak v. Türkiye*, No. 22429/07 25195/07, 03/12/2019; Regarding the fact that Article 220/6 of the TPC is not foreseeable *Isikirik v. Türkiye*, No. 41226/09, 14/11/2017; Regarding the fact that Article 220/7 of the TPC is not foreseeable *Imret v. Türkiye (No.2)*, No. 57316/10, 10/07/2018; *Yüksel Yalçınkaya v. Türkiye*, No. 15669/20, 26/09/2023.

[41] Bkz., CC: E.2023/132, K.2023/183, 26/10/2023.

[42] Bkz. Amnesty International: Public statement on “Türkiye: New judicial package leaves people at continued risk of human rights violations”, EUR 44/7765/2024, 29/02/2024, p.3.

everyone according to the Constitution. [43] The ABCHR believes that the Government's attitude can not be regarded as a goodwill sign.

(39). In this sense, the ABHCR agrees with the CoE Commissioner for Human Rights' opinion that many of these provisions should simply be repealed rather than reformed, having regard to the failure of similar amendments to legislation in the past to prevent new human rights violations.[44] For example, Article 7§2 of the ATL[45] has been amended multiple times in response to judgments from the ECtHR. In these judgments, the Court found that Turkish judicial authorities were interpreting Article 7§2 too broadly, leading to violations of freedom of expression.[46] On the other hand, violations of freedom of expression persist due to the unchanging mindset of judicial authorities for fundamental rights and freedoms in criminal proceedings and the administration of justice.[47]

(40). Taking into account the number of investigations carried out between 2014 and 2021 under Terrorism-related offenses (Article 314 §§ 1-2 and Article 220 §§ 6 and 7 with reference to Article 314 § 3) provided for in the TPC may help to better understand the extremity of this abuse in question:

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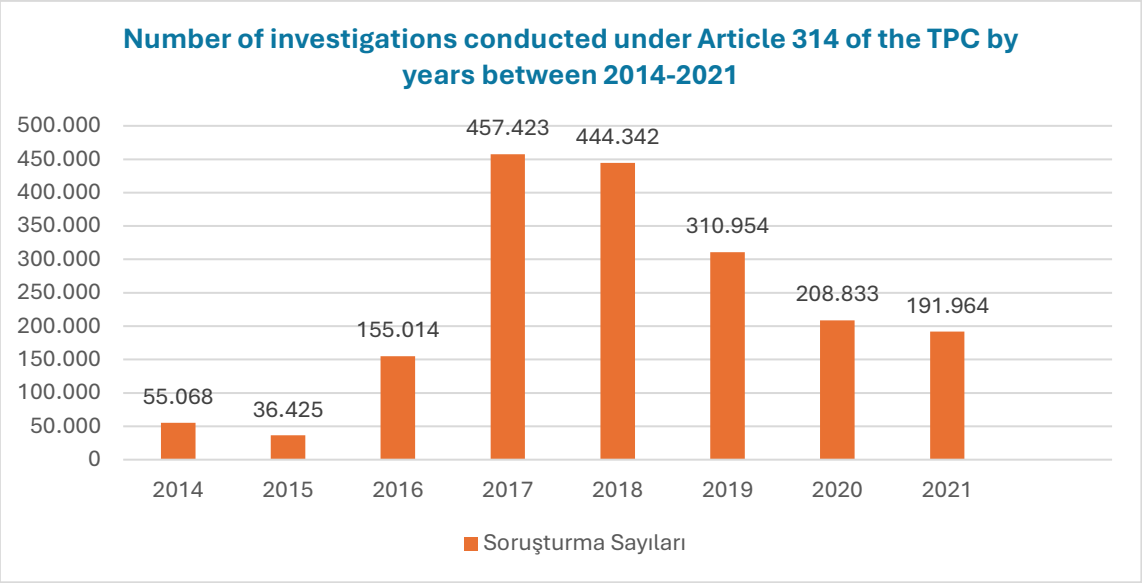
43 See, Article 153 of the Constitution stipulates that "the judgments of the Constitutional Court are binding on the legislative, executive and judicial organs, administrative authorities, real and legal persons", as it can be seen, this provision leaving no room for any other interpretation.

44 See, for example, "Memorandum on freedom of expression and media freedom in Türkiye" by Nils Muižnieks, Commissioner for Human Rights, dated 15 February 2017, CommDH(2017)5, §125.

45 The dissemination of propaganda for a terrorist organization is considered a crime according to this article.

46 See, paragraph 2 of Article 7 of the Anti-Terror Law No. 3713, which entered into force on April 12, 1991, Law No. 4963, which entered into force on August 7, 2003, Law No. 5532 dated July 18, 2006, and Law No. 6459 dated April 11, 2013, amended the first sentence of Article 7/2 of the ATL. For the English texts of these amendments, see: *Belge v. Türkiye*, No. 50171/09, 06/12/2016, § 19. Finally, on 24/10/2019, a sentence was added at the end of paragraph 7§2 with the Law No. 7188. The English translation of this sentence by us is as follows: "*The explanations of thought that do not exceed the limits of informing or for criticism do not constitute a crime.*"

47 See, for the two newly issued ECtHR violation decisions regarding the violation of Article 7§2 of the ATL, despite the guarantees introduced by the 2013 amendment, see: *Durukan and Birol v. Türkiye*, 14879/20, 03/10/2023; *Gümüş v. Türkiye* [BD], No. 44984/19, 09/07/2024.



Source: MP Mustafa Yeneroglu https://www.mustafayeneroglu.com/adalet-bakanliginin-2021-adalet-istatistiklerine-yansiyan-silahli-teror-orgutu-uyeligi-yargilamalari-verileri-hk-basin-aciklamasi/

The figures reflected in the graphic above show that during the SoE (2016-2018)**, more than one million** people were subjected to criminal investigations under the anti-terror legislation. As the expansion in the application of the terrorism legislation during the period of the SoE became permanent after the SoE ended, it can be seen that this figure reached 1,768,583 people by the end of 2021. This picture is the logical and concrete consequence of the Government's abstract anti-terrorism discourse disconnected from concrete violent acts or threats. Once the government chooses this path, it inevitably leads to labeling individuals exercising their fundamental rights as terrorists. This is because there is no reasonable and legitimate criterion, other than the use of violence or the threat of violence for political reasons, to distinguish between an individual exercising his/her fundamental freedoms and a terrorist.

(41). The gravity of the above findings can be understood more clearly when looking at the number of prisoners convicted of terrorism crimes.

POPULATION OF TERROR CONVICTS BY YEARS[48]		
Year	**Number**	**Ratio to total prisoner population (%)**
2014	N/A	3,7
2015	N/A	3,5
2016	5.562	N/A
2017	N/A	N/A
2018	N/A	N/A
2019	28.422	13,2
2020	N/A	N/A

[48] Source: Council of Europe SPACE I statistics.

2021	30.555	13,3
2022	27.654	10,4
2023	23.125	7,6

As can be seen in the table above, until the beginning of 2016, Türkiye had already an unusually high prison population for terrorism criminals (3.5%), well above the European average of 0.5% as shown in the table. Although there are gaps due to Türkiye's lack of disaggregated statistical data for the years 2017-18 and 2020 (*except for the SPACE I 2017 statistic, which was not published by the CoE*), the number of terror convicts has skyrocketed from 5,000 to 30,000 after the declaration of the SoE in 2016. These figures were concordant with the previous graph which indicates the very high number of terrorism-related investigations. On the other hand, since this statistic does not include those arrested for terrorism offenses, it can be easily observed that the situation is much more severe than it seems. It is difficult to find another example of a criminal justice system in which the number of terrorist offenders in the general prison population is so high on a global scale.

B.3.a.ii. Problems arising from differing procedural rules in terrorism trials

(42). The issue of ensuring that the government's anti-terrorism measures comply with human rights standards has several dimensions. Some of these usually lead to violations of the right to a fair trial and the right to liberty and security of the person, especially in the investigation and prosecution of terrorism cases. The ABHRC would like to draw the Committee's attention to the measures taken during the SoE that violate the professional privilege between lawyers and their clients in prisons.[49] As a common practice during the SoE, under the terrorism legislation, lawyer-client meetings were held by taking audio and video recordings in the presence of an official. This restrictive rule was later made permanent by Article 6 of Law No. 7070 dated 01/02/2018. The Venice Commission states that decisions based on regulations imposing temporary restrictions on attorney-client consultation can only be taken in exceptional cases if the existence of security risks has been convincingly demonstrated, taking into account the specific circumstances of each case. It warned that such decisions should also be justified based on the material facts of the case. In the Commission's opinion, it should also be notified to the defense and implemented together with the possibility of judicial reviewing the validity of such limitations.[50] The ECtHR examined the said regulation in terms of compliance with the principle of legal certainty and found that the regulation violated the right to respect for private life because it did not have sufficient protections against arbitrariness.[51]

(43). On the other hand, Article 153§2 of the Criminal Procedure Code (CPC), which restricted the lawyer's examination of the investigation file in terrorism investigations, is

[49] Article 6 of the SoE Decree-Law No. 667 amends Article 59§4 of the Law Law on the Execution of Criminal and Security Measures (Law No. 5275).

[50] Venice Commission: "Türkiye - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016", CDL-AD(2016)037-e, §§ 173-174.

[51] ECtHR: *Canavcı and Others v. Türkiye*, Nos.24074/19 44839/19 9077/20, 14/11/2023, §§ 93-109.

categorically applied to all terrorism investigations, regardless of the concrete circumstances of these types of terrorism cases. Moreover, in terrorism investigations, Article 3 of Decree-Law No. 676 of 03/10/2016, which was inserted into Article 154 as paragraph 2 of the CPC,[52] restricts the lawyer's access to the detained suspect(s) for up to 24 hours. This provision constitutes incommunicado detention and increases the risk of torture or ill-treatment for the suspects charged with terrorism-related offenses. It undermines the absolute nature of the prohibition of torture. The restrictions imposed by these two articles of CPC violate articles 6, 7, 9, 10, and 14[53] of the Covenant, as well as article 4, as this provision jeopardizes the essence of the accused's right to defense.[54]

(44). The judicial authorities are not satisfied with the restrictions on the right to defense either. In practice, many lawyers defending their clients in terrorism cases, especially during the SoE, have been investigated, arrested, detained, or remanded on detention under suspicion of Article 314 of the TPC, simply because of discharging their functions and being identified with their clients or their clients' causes.[55]

(45). The ABHRC respectfully points out that the same situation has been experienced in Antalya. Two examples in particular should be considered in terms of their striking impact on lawyers working in the local area of Antalya. The first of these examples concerns two prominent lawyers. One of them was the former vice-president of the Progressive Lawyers' Association (PLA), Münip Ermiş, who represented many of his clients in terrorism-related cases, and the other was a member of the board of the Antalya Bar Association, Lider Tanrıkulu. Both Mr. Ermiş and Mr. Tanrıkulu had been detained along with 22 other lawyers as part of an investigation by the Antalya Chief Public Prosecutor's Office into allegations of membership of FETÖ.[56] Both Mr Ermiş and Mr Tanrıkulu have been released by a judge's decision after 5 days of detention. The criminal case against them ended in acquittal. Both *Ermiş* and *Tanrıkulu* were released by a judge's

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52 This additional paragraph to Article 154 was transformed into a permanent restriction by Article 3 of Law No. 7070 on 1/2/2018.

53 Restrictions on the suspect's access to a lawyer at the beginning of detention may violate the right to a fair trial, according to relevant ECHR jurisprudence, see, *Salduz v. Türkiye* [GC], No. 36391/02, 27/11/2008.

54 For the case law of the HRA stating that the restrictions imposed on the suspect's meeting with his lawyer from the beginning of his detention constitute a violation of the right to a fair trial, see, *Salduz v. Türkiye* [BD], No. 36391/02, 27/11/2008.

55 See, International Bar Association (IBAHRI) and 30 legal organizations, press release dated 05/04/2019 titled "Lawyers Under Attack in Türkiye", https://www.ibanet.org/article/895FA7BD-9D21-4125-95C8-3EBD714999A5, (accessed: 29/08/2024); and for a more comprehensive report on lawyers subjected to judicial harassment, see Human Rights Watch, "Lawyers on Trial Abusive Prosecutions and Erosion of Fair Trial Rights in Türkiye", 10/04/2019, https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-Türkiye#:~:text=The%20report%20also%20documents%20cases,a%20fair%20trial%20in%20Türkiye. (Accessed: 29/08/2024).

56 See, Council of Bars and Law Societies of Europe, " *Concerns regarding the situation of Turkish lawyers, including Münip Ermiş, Vice president of the Progressive Lawyers Association*", https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Türkiye_-_Turquie/2016/EN_HRL_20160912_Türkiye_Concerns_regarding_the_situation_of_Turkish_lawyers_including_Muenip_Ermis_Vice_president_of_the_Progressive_Lawyers_Association.pdf (accessed: 29/08/2024); See also, https://bianet.org/haber/detention-warrant-for-25-attorneys-in-antalya-178547. (Accessed: 29/08/2024).

decision after 5 days of detention. The criminal case against them resulted in acquittal.[57] The second example involves lawyer Özden Saldıran, who was detained on 15 October 2016 on charges of being a member of the terrorist organization Kurdistan Workers' Party (PKK).[58] The evidence against her was based on interviews with some prisoners in prison as part of her direct advocacy work. Ms. Saldıran remained in pre-trial detention in Antalya L-type prison for 6 months. The criminal case brought before the 10th Chamber of the Antalya Heavy Penal Court ended in acquittal.

(46). Finally, it should be noted that the Government's pressure on lawyers continues to be multidimensional. Through an amendment, Article 2 of *the Law on the Prevention of Laundering Proceeds of Crime*, with Article 20 of the Law No. 7262 dated 27/12/2020, has also added freelance lawyers to the professions obliged to report suspicious banking transactions they have learned. This amendment has recently been revoked by the CC. In its reasoning of this judgment, the CC found that any additional assurance or mechanism to determine whether the information to be shared by lawyers remains within the scope of professional secrets, and the restriction on the right to respect for private life in the form of imposing an unbearable burden on freelance lawyers in the exercise of their profession in the face of the importance of the legal profession and its role in the service of justice is proportionate and not concordance with the requirements of the democratic social order.[59] Despite this judgment, the Government re-enacted it with Article 20 of Law No. 7521 on 26/07/2024, almost without changing its previous version and without considering the absence of the guarantees determined by the CC in its reasoning. Such an obligation, which is opposed to the nature of the legal profession and undermines the relationship of trust that must be established in lawyer-client relations, jeopardizes the right of suspects and lawyers to benefit from the legal assistance of a lawyer, which is inherent in the right to a fair trial. As a result of this amendment, it is deeply feared that such obligations of lawyers, especially in terrorism cases, will be brought to the agenda and additional pressure elements will be created on lawyers and their clients.[60]

B.3.b. Recommendations

(47). Under this heading, the ABHRC has formulated the following recommendations:

- Bring the definition of terrorism provided in Article 1 of the ATL in line with the principle of certainty as soon as possible in a way that

[57] İbid, HRW, "Lawyers on Trial", p. 27.

[58] European Democratic Lawyers: "Another lawyer under threat in Türkiye", 24/10/2016. http://www.aeud.org/2016/10/another-lawyer-under-threat-in-Türkiye/ (Accessed: 28/08/2024).

[59] CC: E. 2021/28, K.2024/11, 18/01/2024.

[60] For the press release of the Istanbul Bar Association on the subject, see, "Imposing a Notification Obligation on the Lawyer is Contrary to the Legislation and Spirit of the Lawyer Profession", https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=19031&Desc=Avukata-%C4%B0hbar-Y%C3%BCk%C3%BCml%C3%BCl%C3%BC%C4%9F%C3%BC-Y%C3%BCklemek-Avukatl%C4%B1k-Mesle%C4%9Finin-Mevzuat%C4%B1na-Da-Ruhuna-Da-Ayk%C4%B1r%C4%B1d%C4%B1r!#:~:text=Avukatl%C4%B1k%20Kanunun%2036.,ban%20yapt%C4%B1%C4%9F%C4%B1%20t%C3%BCm%20activities%20d%C4%B1r (Accessed 29/08/2024).

meets the elements set out in United Nations Security Council Resolution 1566 (2004) or line with the European Commission's 2001 "Common Position Paper";

- The provisions of Articles 314 §§ 1-3 and 220 §§ 6-7 of the TPC, which regulate terrorist crimes such as managing, being a member, aiding terrorist organizations, and committing crimes on behalf of the organization, should be amended to eliminate contradictions to the principle of legal certainty as soon as possible. This future amendment should align with the guarantees of the legality of the crimes and penalties determined in the decisions of the ECtHR and the CC;
- The current provisions that limit the role of lawyers in terrorism cases by denying them access to their clients for 24 hours and the investigation file, as stated in Articles 153§2 and 154§2 of the TPC, should be promptly amended. It is necessary to require consideration of the specific circumstances of each case and ensure these restrictions are only applied in truly exceptional situations.;
- Article 2 of the Law on the Prevention of Laundering Proceeds of Crime, which obliges lawyers to report their clients in a way that eliminates lawyer-client confidentiality, should be amended immediately in a way to removes lawyers from the list of professions obliged with notification;

B.4. Access to justice, the right to a fair trial, and the independence of lawyers and the judiciary (Articles 2, 7, 9, 10, and 14)

B.4.a. Rule of law and independence of the judiciary

B.4.a.i. Change in the structure of the Council of Judges and Prosecutors (CJP) and independence of the judiciary

(48). ABHRC would like to emphasize that the competence, independence, and impartiality of the judiciary, as outlined in Article 14 of the Covenant, are absolute rights that are not subject to any exception.[61]

(49). The emergence of corruption allegations involving the son of then Prime Minister Recep Tayyip Erdoğan and four ministers on 17 and 25 December 2013 marked the start of a turbulent period in domestic political processes. During this time, there were legislative amendments directly related to fundamental rights and freedoms in the Turkish Penal Code (TPC) and Criminal Procedure Code (CPC), as well as other amendments

[61] See, e.g., Article 14 of the HRC: General Comment No.32 on the Right to Equality and a Fair Trial before the Courts, U.N. Doc. CCPR/C/GC/32 (2007), §14.

known as the Internal Security Package. [62] Also, amendments had been made to the Law on the High Council of Judges and Prosecutors in 2014 related to the direct judiciary.[63]

(50). The developments that put the independence of the judiciary on the shelf came with the legal transformation adopted in the 2017 referendum, and subsequently with Article 208 of Decree-Law No. 703 dated 02/07/2018. One of the most significant changes that affect the independence of the judiciary is the alteration in the composition of the CJP. The former High Council of Judges and Prosecutors had 22 members, two of whom were appointed by a neutral President. However, the new CJP now consists of 13 members, four of whom are appointed by the President, who currently is the leader of the executive branch and of his political party. The Minister of Justice and the Deputy Minister are natural members of the Board, therefore, six members directly come from the executive branch. In the current structure, three out of seven members elected by the Grand National Assembly of Türkiye were chosen by the opposition bloc, while the remaining four were elected by the ruling bloc deputies. [64] Ironically, none of the 13 members of the new CJP is elected by judges and prosecutors who are the genuine representatives of the judiciary. As a consequence, the executive branch of the Government was placed in the dominant position in the composition of the new CJP by those above-mentioned amendments.

(51). Following the developments described above, the European Network of Councils for Judiciary, *an organization that brings together the independent judicial boards of European countries*, suspended the membership of the CJP and described the CJP as "a Board in name only" because none of its actions or decisions showed any concern about the independence of the judiciary.[65]

B.4.a.ii. Basic judgeship guarantees, including during the SoE

1. Dismissals of judges and prosecutors

(52). Right after the unsuccessful coup attempt, around 30% of the total 4,560 judges and prosecutors were dismissed from their positions in a widespread and sequential manner. Despite the legal validity of fundamental safeguards against improper dismissals being maintained within the SoE measures, those dismissals were carried out without proper disciplinary and special investigative processes.[66] The mass detentions of judges, prosecutors, and lawyers have significantly undermined the justice system and its

[62] See, Law No. 6638 on Police Duties and Authority, Law on the Organization, Duties and Powers of the Gendarmerie and the Law on the Amendment of Certain Laws published in the Official Gazette dated 04/04/2015 and numbered 29316.

[63] The Association of Judges' and Prosecutors' Unions (YARSAV) interpreted HSYK as a general directorate in the Ministry of Justice and evaluated these changes as a new stage in the executive's siege of the judiciary. See, YARSAV: "Explanation on HSYK´s Decree dated 16.01.2014". https://yarsav.org.tr/index.php?p=336. (Access 30/08/2024).

[64] Bkz., EURONEWS: https://tr.euronews.com/2021/05/20/CJP-secimleri-7-uyenin-4-unu-cumhur-3-unu-millet-ittifak-sececek (Accessed: 30/08/2024).

[65] https://www.encj.eu/index.php/node/578.

[66] See, e.g., European Commission, 2018 Report, p. 23. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0153 (Accessed: 28/09/2024).

capacity to provide an effective remedy for and protect against human rights violations.[67] The Human Rights Commissioner noted that the mass dismissal of judges and prosecutors *had created "an atmosphere of fear among the remaining judges and prosecutors*".[68]

(53). The Venice Commission stated that, in general, dismissals under the SoE Decrees-Laws can be regarded as disproportionate to the exigencies of the situation, as authorities could prevent future uprisings, especially if less severe measures, such as suspending members of the judiciary from their posts, were attempted first.[69]

2. Criteria for the selection, recruitment, and promotion of new judges

(54). In the government's 2022 report, it has been stated that a total of 12,709 members of the judiciary, including 8,025 judges and 4,684 prosecutors, were admitted to the profession after mass dismissals of members of the judiciary under the SoE Decree-Law provisions. The ABHRC observes that the circumstances under which these appointments take place have led to significant erosion in the judiciary's function of dispensing justice, especially the competence of judges.

(55). During the SoE, the vacancies created by the dismissal of a large number of members of the judiciary, equivalent to 30% of the total number of them, have been filled by judges and prosecutors recruited under an accelerated procedure. The difficulties arising from the fact that candidates for judge and prosecutor had a threshold of 70 out of 100 points in the previous judgeship examination, combined with the desire of the ruling bloc to appoint trusted cadres, led to the abolition of the minimum examination score requirement of 70 by Article 6 of Decree-Law No. 680.[70] On the other hand, the abolition of the two-year internship period for judges and prosecutors was an attempt to ensure that candidates for judges and prosecutors are quickly integrated into the system without adequate professional training. Although the minimum exam grade application was reinstated,[71] this situation raises serious questions about the competencies of more than ten thousand judges and prosecutors selected and appointed between the two dates. On the other hand, the lack of objective, merit-based, uniform, and predetermined criteria for the recruitment and promotion of new judges and prosecutors can be counted among other indicators of the severe erosion of judicial independence. It should also be noted that the CJP and the Judicial Academy have no role in the selection of judges and prosecutors, which demonstrates the influence of the executive branch in the selection of candidates. It should be noted that the appeals of the candidates who were eliminated during the

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67 For the press release of the International Commission of Jurists (ICJ) dated 06/12/2016, see: https://www.icj.org/Türkiye-emergency-measures-have-gravely-damaged-the-rule-of-law/ (Accessed 28/08/2024)

68 Bkz., Commissioner for Human Rights: "Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights", CommDH(2017)29, 10/10/2017, §38.

69 Bkz., Venedik Komisyonu: "Türkiye - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, CDL-AD(2016)037-e, § 85.

70 See, it was published in the Official Gazette of 6 January 2017.

71 See, Article 4 of Law No. 7165 on 20/02/2019.

interview, although they had passed the written examination, were not answered in a way that would allow for a possible judicial review.[72] As mentioned above, it should be emphasized that the administrative committees that carry out these selection processes do not respect transparency and reliability criteria and control mechanisms.

(56). The Minister of Justice, a political figure affiliated with the government, manages the boards that select new judges and prosecutors and conducts annual evaluations of their personnel and discipline. This situation has brought with it doubts that judges and prosecutors are selected in a partisan manner.[73]

(57). A testimony, reflected in the PACE report dated 20/03/2018, is quoted below as it strikingly summarizes what happened:

> *"....The President of the Union of Turkish Bar Associations, whom I interviewed, mentioned the lack of a minimum score in the entrance exam and the predominant weight given to performance in later unrecorded oral interviews with politically biased questions: as a result, candidates with the "correct" political profile who performed poorly in the written exams were still hired..."* [74]

(58). On the other hand, with the amendment made to its resolutions on 15/01/2020, the CJP included the decision-making performance of judges in accordance with the case law of the CC and the ECtHR among the criteria regulating the promotions of judges and prosecutors.[75] However, in practice, it is understood that the opposite of this criterion is being applied in terms of the promotions of judges and prosecutors. Below are two striking examples brought to the Committee's attention as evidence of this claim. The first of these is the Istanbul 14th Heavy Penal Court, *which did not comply with the violation judgment made against Deputy Enis Berberoğlu*, whom the CC found to be in violation as a result of an individual application. The president of this Heavy Penal Court is then promoted.[76] After this promotion, the relevant judge was appointed as the Deputy Minister of the Ministry of Justice on 01/06/2022, then became a member of the CJP in this capacity and still continues this duty.[77]

(59). The 3rd Criminal Chamber of the Court of Cassation, which is also composed of judges appointed by the CJP, decided to reject the release requests of Can Atalay, whose

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[72] For two striking examples reflected in the media, see, https://medyascope.tv/2020/09/25/hakkarili-mehmet-oner-derece-yaptigi-hakimlik-sinavinin-tek-soruluk-mulakatinda-elendi-mulakatta-kimliksel-sorunla-karsilasacagimi-biliyordum-dava-acacagim/; https://gazetememur.com/kpss/turkiye-2ncisi-3-dakikada-elendi-mulakat-mulkun-temeli,NOZqN1Ubsk29H7qTqX_q6Q.

[73] https://yesilgazete.org/yargida-kadrolasma-akpli-belediye-baskani-ve-ilce-baskani-hakim-adayina-referans-oldu/ ; https://teyit.org/analiz/hakimlik-sinavini-kazananlar-arasinda-ak-parti-yoneticileri-var-iddiasi; https://www.cumhuriyet.com.tr/haber/hakim-savci-atamalarina-yandas-damgasi-1741449 ; (Accessed: 02/09/2024).

[74] PACE: "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", Report | Doc. 14506 | 27 February 2018, §98.

[75] CJP: 6/1 (j) of the Principle Decision dated 05/04/2017 and numbered 675/1 on the Principles of Promotion of Judges and Prosecutors. Item.

[76] See. https://www.evrensel.net/haber/443711/CJP-CC-kararini-yok-sayan-hakimi-terfi-ettirdi (Accessed: 19/08/2024.

[77] Official Gazette, Date: 02.06.2024, No: 31854, https://www.resmigazete.gov.tr/eskiler/2022/06/20220602-7.pdf (Accessed: 19/08/2024).

conviction in the Gezi Trial was not finalized due to his election as a deputy in the general elections of 2023, despite the violation judgment of the Constitutional Court. The 3rd Criminal Chamber of the Court of Cassation not only refused to follow the judgment of the CC, despite the clear provision of Article 153 of the Constitution but also filed a criminal complaint against the members of the CC who delivered the judgment. [78] In the face of this scandalous decision, the Union of Turkish Bar Associations (UTBA) filed a criminal complaint against the President and the members of the 3rd Criminal Chamber of the Court of Cassation, demanding that a criminal investigation should be opened against them for violating Articles 109 (deprivation of personal liberty), 257 (abuse of office), 301 (insulting the Turkish nation, the State of the Republic of Türkiye, institutions and organs of the State) and 309 (violation of the Constitution) of the TCP and that they should be punished by conducting the investigation effectively and efficiently.[79] Currently, the requirements of the CC's judgment on this matter have not been fulfilled and no information on the outcome of the criminal complaint filed by the UTBA is available in open sources, even though 8 months have passed. On the other hand, the Head of the 3rd Criminal Chamber was first a candidate for the Presidency of the Court of Cassation, and then he was appointed by the President to the Chief Public Prosecutor of the Court of Cassation.[80]

3. Geographical safeguards of judges and prosecutors

(60). (59). The vagueness of the criteria for the assignment of judges and prosecutors elsewhere from their appointments of a court belonging to its jurisdiction against their will, where they reside is an element that eliminates their geographical safeguards. This ambiguity, which has a long history in the judiciary, is one of the tools of the executive branch to exert influence over the judiciary. Every year, the CJP replaces approximately one in four judges by its decrees.[81] Since the CJP does not publish disaggregated statistics, we do not indicate how many of these transfers were made against the will of judges and prosecutors. It is, moreover, possible to transfer judges and prosecutors outside the period of the replacement decree. On the other hand, the Minister of Justice has the power to transfer judges and prosecutors to another jurisdiction under the name of temporary replacement. This power, even though it is called temporary, is extremely open to arbitrariness, as it allows direct intervention by the executive due to its ambiguity.

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78 See Evrensel, "CJP promoted the judge who ignored the Constitutional Court decision" https://www.evrensel.net/haber/443711/CJP-CC-kararini-yok-sayan-hakimi-terfi-ettirdi (Accessed: 19/08/2024).

79 https://www.barobirlik.org.tr/Haberler/anayasa-mahkemesi-kararini-uygulamayan-yerel-mahkeme-ve-yargitay-uyeleri-hakkinda-ceza-sorusturmasi--84444b (Accessed: 19/08/2024).

80 Official Gazette, Date: 16.05.2024, No: 32548, https://www.resmigazete.gov.tr/eskiler/2024/05/20240516-11.pdf (Accessed: 19/08/2024).

81 See, above, the explanations after paragraph 15 of the analysis with the YRSB.

B.4.a.ii. Threats to the right to defense and the independence of the legal profession

(61). One of the elements of the independence of the judiciary is the independence of lawyers. Several restrictions are spread across the CCP and other relevant laws.[82]

(62). In May 2020, an important legislative amendment concerning the legal profession was submitted to the GNAT by the Government: The amendment, which provides for the establishment of several provincial bar associations in cities with more than 5,000 lawyers and changes the electoral system of the UTBA in a way that distorts the representation of provincial bar associations at the national level, has raised concerns among bar associations, the professional organizations of lawyers, that it is intended to further increase the Government's influence and pressure on bar associations that monitor human rights violations and criticize the government.

(63). Concerns have been expressed in national and international human rights circles that the first part of this amendment will divide members of bar associations in major cities into political fronts, and lead courts and other government agencies to treat lawyers and their clients differently depending on the bar association to which they belong to.[83] In particular, concerns about the risks of undermining the impartiality and independence of the legal profession and seriously undermining the ability of bar associations to defend human rights and the rule of law by facilitating the government's targeting of "non-partisan" bar associations have justified the reactions to the amendment.[84] The division of bar associations also has raised concerns about the risk of preventing bar associations from carrying out equal, uniform, and consistent legal services, for example in matters of legal aid appointments and conducting disciplinary proceedings.[85]

(64). On the other hand, the amendment resulted in a significant reduction in the number of representatives sent to the UTBA by some of the provincial bar associations, which have a high number of member lawyers. Although the Istanbul, Ankara, and Izmir Bar Associations represent 55% of all lawyers in Türkiye, they currently send only 7% of representatives to the UTBA. The new distribution of representatives has also shaken the decisive position of large and politically vocal bar associations in their disciplinary actions or expulsion from the bar association, in other words, the consistency of the ethical and administrative discipline of the profession. Also, this amendment was realized

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[82] See explanations under B.3.a.ii above.

[83] See, then, the press release of the Commissioner for Human Rights dated 07/02/2020: https://www.coe.int/en/web/commissioner/-/commissioner-s-concerns-about-proposed-changes-affecting-the-legal-profession-in-Türkiye, (erişim 30/08/2024); ayrıca bkz.: Freedom House, "Türkiye: New Law on Bar Associations anAttack on Freedom of Association", 28 July 2020, https://freedomhouse.org/article/Türkiye-new-law-bar-associations-attack-freedom-association ; Human Rights Watch, "Türkiye: plan to divide, undermine legal profession", 8 Temmuz 2020, https://www.hrw.org/news/2020/07/08/Türkiye-plan-divide-undermine-legal-profession , (Accessed: 30/08/2024).

[84] See, for example, the joint opinion of the Venice Commission of the Council of Europe and the Directorate-General for Human Rights and the Rule of Law: "on the July 2020 Amendments to the Attorneyship Law of 1969, CDLAD(2020)029, 9 October 2020, pg. 12.

[85] Ibid., p. 12.

without discussing and consulting with bar associations, and this situation was heavily criticized by bar associations, civil society, academic circles, and international organizations.[86]

(65). Lawyers took to the streets against the proposal just before the amendment was enacted in front of the Parliament and protests were held throughout the country. During the protest marches in Ankara, many representatives of the provincial bar associations were stopped by the police who tried to prevent them from entering the city of Ankara, and barricades were erected in front of them. Lawyers participating in the protest were deprived of necessities such as food, water, shelter, and toilet access for 27 hours.[87]

(66). Despite objections from various quarters, this amendment was accepted in the GNAT by the majority of the ruling parties coalition and the main opposition party brought this amendment to the plenary of the CC, and it was found to be in line with the Constitution.[88]

(67). However, the Istanbul Bar Association announced that they received information that lawyers working in public institutions and public banks were under pressure to transfer to the 2nd Bar Association of İstanbul to be established. A similar statement came from the Ankara Bar Association.[89]

C.4.b. Recommendations

(68). Under this heading, the ABHRC offers the following recommendations:

▶ **Structure of the CJP and Independence of the Judiciary**

- To ensure a fairer selection process for CJP members, we propose amending the Constitution to remove the Minister of Justice and their Deputy Minister from the Board. Additionally, ABHRC suggests limiting the powers of the President and the GNAT in appointing members, potentially reducing their role to a symbolic level.;
- Amendments should ensure judges and prosecutors have a direct say in selecting CJP members and abolish restrictive *de jure* and *de facto* obstacles to establishing their professional associations;

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86 See, among other reactions cited above, Bertil Emrah Oder, "Attacking the Bar Associations: A new episode of capture and distraction in Türkiye", VerfassungsBlog, July 17, 2020, https://verfassungsblog.de/attacking-the-bar-associations/(access: 30/08/2024).

87 See. https://www.bbc.com/turkce/haberler-turkiye-53158225 (Accessed: 30/08/2024).

88 See, https://anayasa.gov.tr/tr/haberler/norm-denetimi-basin-duyurulari/ayni-ilde-birden-fazla-baro-kurulmasina-imk%C3%A2n-taniyan-kurallarin-anayasa-ya-aykiri-olmadigi/ (Accessed: 30/08/2024).

89 Istanbul Bar Association, "Istanbul Bar Association Will Expose Pressure", 16 February 2021, https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=16202&Desc=Istanbul-(Barosu-Baskıyı-İfşa-Emezi; https://www.cumhuriyet.com.tr/haber/ankara-baro-baskani-iki-nolu-baroya-destek-vermeyen-kamu-avukatlari-surgun-ile-tehdit-ediliyor-1810980 (Accessed: 30/08/2024).

▶ Basic Judgeship safeguards, including the SoE Period

- Selection criteria for judges and prosecutors should be merit-based, objective, and predetermined. Interviews for these positions should be recorded, and evaluation processes must be transparent.;
- Eliminate arbitrary transfers, link them to objective criteria, and abolish the Minister of Justice's temporary transfer and appointment powers.;

▶ The Right to Defense and the Independence of the Legal Profession

- Regulations that split bar associations should be abolished. Measures should be taken to strengthen existing bar associations, especially in legal aid processes, and to protect their autonomy.;
- Ensuring that the system for the election of delegates to be sent to the general assembly of the UTBA is determined fairly, taking into account the number of members of the bar associations;