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The Reform of Bar Associations in Turkey: Questions and Answers

In June 2020, the Turkish government proposed a new draft law amending Turkey’s Law on Lawyers. The draft greatly reduces the representation of lawyers from Turkey’s main cities at the national Union of Turkish Bar Associations and proposes that in provinces with over 5000 lawyers, any group of at least 2000 lawyers can set up their own bar association. The government argues that the creation of more bar associations would mean a “more democratic and pluralistic” system, but the majority of bar associations, many lawyers and activists argue that the real intent and impact will be to disempower existing bar associations in larger cities which have criticized the government for breaches of human rights and the rule of law. Below is a series of seven questions and answers that explains why the government’s latest interference with Turkey’s legal profession is so concerning:

What are the functions of Turkey’s current bar associations?

Every lawyer in Turkey is currently obliged to register with a single bar association in the province in which they work and there are 80 bar associations in all. According to article 135 of the Constitution, bar associations in Turkey have the status of public bodies, representing and defending the interests and integrity of the legal profession while upholding and protecting the rule of law and human rights. Provincial bar associations play a key role in the justice system, including by administering legal aid services to ensure that anyone suspected of a serious crime can enjoy their right to legal representation promptly after arrest. The bar associations are responsible for issuing licenses to lawyers to practice once they have completed their traineeships and for ensuring lawyers abide by the ethical standards of the profession.

Provincial bar associations have established various commissions and centers within the association to work on human rights issues in general as well as more discrete thematic issues such as women’s rights, children’s rights, and refugee rights. Members from both commissions and boards of the bar associations in some cities frequently conduct human rights monitoring and make public statements relating to their findings. The most active of Turkey’s provincial bar associations perform an important human rights watchdog function, a role that has been more important than ever as Turkey’s human rights and rule of law crisis deepens. Following the July 2016 coup attempt, bar associations have taken an active role in documenting and reporting human rights violations, including cases of torture and enforced disappearance, allegations which Turkey’s authorities have completely ignored.

Provincial bar associations are affiliated to the Union of Turkish Bar Associations, an Ankara-based umbrella body representing the legal profession at the national level. Each bar association sends its representative delegates to the union where they have voting powers and serve on national commissions. Although all bar associations are recognized as public legal entities (*kamu tüzel kişisi*) separate from the Union of Turkish Bars, the union itself holds a key position because it controls and distributes significant financial sources to the provincial bars to cover legal aid services.

What will the Turkish government proposal to introduce multiple bar associations mean and will it create a “more democratic and pluralistic” system, as the government has claimed?

The draft law to amend Turkey’s Law on Lawyers will have the most dramatic impact on the three largest bar associations in Turkey—those from Istanbul, Ankara, and Izmir. By allowing any group of 2000 lawyers in provinces with over 5000 lawyers, to set up their own bar associations, the law could lead to several bar associations being set up in big cities like Istanbul, Ankara, and Izmir. These changes are being imposed on the legal profession over the objections of the vast majority of its representatives and will be rushed through parliament three months ahead of October 2020 provincial bar association elections.

While the government has suggested that the creation of more bar associations would mean a “more democratic and pluralistic” system, in practice the real effect is likely to be disempowering of large existing bar associations, which happen to be those that have criticized the government for breaches of human rights and the rule of law.

In today’s Turkey, the likely impact of permitting rival bar associations would have the effect of encouraging the legal profession to split directly along political lines. Seen in this light the motive for reform is not so benign and suggests the government is seeking to and may well succeed in undermining the legal profession’s role to date in upholding human rights and the rule of law.

What else does the new law introduce?

The proposed new law would also alter the number of delegates provincial bar associations can send to the Union of Turkish Bars. Delegates at the union elect the president of the Union of Turkish Bars and participate in different commissions and functions of the union at the national and international levels. Once again this would have the greatest impact on the biggest bar associations by dramatically reducing their influence within the union whose next election is due to take place in December 2020. Currently, Istanbul, Ankara, and Izmir, because they represent the greatest number of lawyers, are allowed to send more delegates so that there is proportional representation of provincial bar associations at the union. They are currently allowed three delegates and then one for every 300 members of the bar association. Under the new law, all bars will be allowed to send four delegates to the union, and then one delegate more for every 5000

members. As a result, the smallest bars will gain much greater power than they currently have and together will exercise greater influence over the activities of the union.

For example, a provincial bar association with less than 100 lawyers such as Ardahan in northeastern Turkey will be able to send 4 delegates, where it used to be able to send 3, but a bar association like Izmir in western Turkey with over 9500 lawyers, which used to be able to send 35, will now be able to send just 5 delegates. A delegate from Ardahan would, therefore, represent less than 25 lawyers, while a delegate from Izmir would represent approximately 1900. Such a radical imbalance which disproportionally gives power to bar associations that have very few members and seriously diminishes the influence of bars with thousands of members is neither more democratic nor more pluralistic, despite the government's claim.

Turkey's Constitutional Court has on numerous occasions ruled that lack of proportional representation of chambers in professional organizations breaches principles of democracy and human rights. According to the Constitutional Court, principles concerning the right to vote, to be elected, and to engage in political activity, as stipulated under article 67 of Turkey's Constitution, also apply in elections of professional bodies. Article 67 of the Constitution provides that the electoral laws shall be drawn up so as to reconcile the principles of fair representation and stability of government. The Constitutional Court, relying on this provision, has [held that an election system for professional organizations that does not secure the fair representation principle](#) violates the principles of rule of law and democracy. The government seems to want to ignore this well-established jurisprudence in its proposed amendment to reform bar associations. The government is aware that the smallest bar associations have little capacity to do human rights monitoring or to provide analysis of the laws and policies for their conformity with human rights norms. A move to greatly increase the influence of those bar associations at the union level would appear to be a means of sidelining the human rights work of the main bar associations.

How does the Turkish government view the current bar associations?

Because prominent bar associations have played an increasingly important role in documenting human rights abuses and commenting on the deep erosion of the rule of law and fair trial rights in Turkey, they have been a thorn in the flesh of the current government. President Erdoğan has expressed open dissatisfaction with the bar associations over the past year.

In September 2019, 52 out of 80 bar associations boycotted a ceremony held at the presidential palace to mark the opening of the judicial year on the grounds that the president hosting and presiding over such a ceremony compromised the impartiality and independence of the judiciary. The boycott statement raised the bar associations' concerns about the extent of deep executive interference in the judiciary, a concern repeatedly raised by the Council of Europe, UN bodies and the EU. At the ceremony, seemingly in response to the boycott, President Erdoğan expressed a readiness to change [the rules concerning bars](#).

Other government figures have also targeted the lawyers' bars. The Interior Minister in June 2018 twice publicly accused the Diyarbakır Bar Association of supporting terrorism without providing any evidence, prompting criminal investigations into its board. After the Ankara bar association reported on torture at the Ankara security directorate, in July 2019 the deputy Interior Minister [accused the bar association of having links with the Gülen movement](#), which Turkey accuses of masterminding the 2016 coup attempt. And in May 2020, President Erdoğan seized on the fact that the Ankara bar association had condemned a homophobic speech by the head of the Religious Affairs Directorate as [another reason to push for a change to the law on bar associations](#). Prosecutors launched criminal investigations against the Ankara and Diyarbakır Bar Associations, following the President's speech targeting bar associations. [A media source reported](#) that the president stated in internal debates of his party: "Let multiple bars be established to show everyone's true face. Let it be clear there is a PKK bar association that has the appearance of being a [main opposition] Republican People's Party bar association, a PKK bar that looks like a PKK bar association."

How have the bar associations themselves responded to the proposed new law?

Bar associations were not consulted on the proposal despite its direct impact on them, and have all expressed strong opposition to it, arguing that the law is an attempt to divide lawyers and undermine their role and function. Seventy-eight out of 80 bar associations have [signed a public statement opposing the law](#). Bar chairs, members of the boards, and many lawyers participated in a march to Ankara which was violently dispersed by the police. Authorities have attempted to ban further efforts to hold public assemblies in Ankara but the bar associations are determined to continue to oppose the draft law.

What do international standards on independence of the legal profession say?

A strong and independent legal profession, along with an independent judiciary, is one of the foundations of a fair justice system that upholds the rule of law and allows for the effective protection of human rights. Any assessment of whether such independence is upheld should be made in light of [international standards and principles](#) on the role of lawyers that inform international law, and are closely linked to obligations under international human rights law, including the right to a fair trial, the right to liberty, and the right to an effective remedy for violations of human rights. Although the governing framework and institutions of the legal profession does and may legitimately vary between different national systems, international standards set out some minimum principles.

First, the right of lawyers to form and maintain independent, self-governing professional associations must be respected as an exercise of the right of freedom of association (recognized in principle 23 of the UN Basic Principles on the Role of Lawyers), as well as a necessary basis for the independent governance of the profession. The UN Basic Principles, in principle 24, provide that lawyers are entitled to form and join such associations in order to represent their

interests, promote their continuing education and training, and protect their professional integrity. They also provide for institutional and practical guarantees of independence: that the governing body of a bar association should be representative of its members and freely elected by them and that the bar association must be able to exercise its functions without external interference, from government or other actors (principle 24). The Council of Europe takes the same position, as reflected in its Committee of Ministers' *Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer*. In Principle V.1, it provides that “[b]ar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.” The standards for the independence of the legal profession of the International Bar Association (1990) envision the establishment in each jurisdiction of “independent self-governing associations of lawyers recognized in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person” (paragraph 17). The independence of the bar association from external interference, institutionally and in practice, is not only a requirement of international standards but is also, as the Special Rapporteur on judges and lawyers has pointed out in his 2018 report, “the underlying rationale for [bar associations] creation”.

It is important to note that the requirement of independence places responsibilities both on bar associations themselves but also, on the executive and legislative powers to respect this independence, refrain from interference, and put in place—and respect in practice—appropriate legislative and institutional safeguards. Whatever form of governance is developed, it must be independent and must provide a framework within which lawyers can fulfill their function of protecting human rights through the justice system. In practice, as the Special Rapporteur on the Independence of Judges and Lawyers has recognized, this requires that the legal basis for the bar association is developed with the meaningful participation of the profession.

Where a legislative reform process is initiated, taking into account these international standards, we need to ascertain: whether the reform is genuinely, in good faith, directed towards supporting and strengthening the independent and effective governance of the legal profession; whether existing independent bar associations have been involved in the development of the proposal; whether it would potentially, either in law or in practice, weaken the independent governance of the legal profession; and what consequences it would have for the capacity of individual lawyers to perform their vital duties in providing independent legal advice and protecting human rights.

What would the possible negative effects of the proposed new amendment be?

Firstly, an assessment of the practical impact of the amendments, suggests that the aim of the government is to make it easier, through extreme under-representation of delegates from the largest bar associations at the union, to influence the election of the president of the union due to take place in December 2020. Istanbul, Ankara, and Izmir Bars represent 55 percent of all lawyers in the country, but after the amendment, they will be entitled to only 7 percent of all delegates at the union. The December union election may explain the government’s efforts to get the draft amendment through parliament in July. The government has every interest in seeing the

election of someone close to it as the president of the union, and the under-representation of major bar associations may be a way to achieve it. Since significant financial sources of bar associations are distributed by the union, achieving control of the union would mean that the government would be able to exercise control over all bar provincial associations too. Before the December election, the provincial bar association elections in October, seem to be the other reason for the government's aim to get the law passed immediately.

Secondly, it is unclear how the creation of multiple bar associations in major cities will operate alongside the key function of providing legal aid services on a universal and equitable basis.

Thirdly, as has been reported and by numerous international bodies and human rights groups, including the ICJ and Human Rights Watch, the Turkish judiciary today fundamentally lacks independence. Council of Europe Commissioner for Human Rights Dunja Mijatović has noted that the new amendment cannot be isolated from the rule of law crisis in the country [documented in her most recent report on Turkey](#), and has raised concerns that such a move will “[further damage the appearance of impartiality within the justice system.](#)” If the amendments are passed, the real and likely risk is that judicial authorities whose independence and impartiality is seriously in question, will seek to identify the political opinion of lawyers on the basis of their membership of politically divided bar associations, and to allow this to improperly influence and bias their judicial decision-making. This will further damage the already weakened impartiality of the judiciary. As the European Court of Human Rights has observed in *Şahiner v. Turkey* (application no. 29279/95, paras 44-45), for the justice system to be credible to the public in a democratic society, even appearances of independence and impartiality may be of some importance. It is essential that the courts in a democratic society inspire confidence in the public and, above all, in the accused when it comes to criminal proceedings. As lawyers are a key element of the justice system, it is doubtful whether public confidence in the independence of the justice system can be maintained when bar associations are divided along political lines.

Fourthly, there is the risk that bar associations will not be treated equally by the government. Lawyers registered in bar associations that identify themselves as pro-government might be favored by the government in various ways. For instance, such lawyers may enjoy an advantage if they apply to be judges and prosecutors in a recruitment system over which the government exerts a high level of control, as noted by the [Council of Europe Commissioner for Human Rights in her most recent report](#), and this favored status might encourage lawyers to switch bar associations to reap the benefits in their professional career.

Finally, the human rights work of critical bar associations is likely to be greatly diminished. Whenever a critical bar association reveals a human rights violation or criticizes the government's human rights policies, a counter-statement would be likely to be issued by another bar association, weakening the value of the critique and politicizing the matter.

In summary, while the creation of rival bar associations in cities might at face value seem to offer lawyers a greater choice over which professional body to join, the government's own statements about the plan and the timing and means by which it is being introduced demonstrate a political purpose unrelated to legitimate efforts to advance or strengthen standards in the legal

profession. The proposed law is politically divisive, will end proportional representation of bars at the national level in the Union of Turkish Bars, and will contribute to undermining the appearance of independence and impartiality in the justice system.