

President of Turkey
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28 May 2020

Your Excellency,

Turkey – Criminal investigation launched against Ankara Bar Association and Diyarbakir Bar Association

The signatories of this letter (see Annex) are all professional representative bodies or voluntary associations of lawyers in our respective jurisdictions. Our shared interest is the independence of the legal profession, the right to a fair trial, and the rule of law.

We are very concerned about the Ankara Prosecutor's office launching a criminal investigation against the Ankara Bar Association on the grounds of "openly disrespect[ing] the religious belief of a group" (article 126(3) of the Penal Code of Turkey). This investigation was opened after the Ankara Bar Association filed a complaint – on 27 April 2020 - against the head of Turkey's Religious Affairs Directorate, Mr. Ali Erbaş. The latter, in a sermon on 24 April 2020, referred to COVID-19 generally and, referencing HIV, suggested that members of the LGBT community spread disease, urging people to "join the fight to protect people from such evil".

In its complaint, the Ankara Bar Association argued that Mr, Erbaş' remarks appear to constitute public provocation of hatred and hostility, an offence established in article 216(2) of the Turkish Penal Code. It has been reported that your Excellency, as well as the Minister of Justice, condemned the Ankara Bar Association for its criticism of Mr. Erbaş' remarks. We also understand that the Diyarbakir Chief Prosecutor's Office has launched a criminal investigation into the Diyarbakir Bar Association on the same grounds, after that Bar Association also spoke out against the remarks made by the head of the Religious Affairs Directorate.

We believe that the instigation of these criminal investigations into both Bar Associations, as well as the endorsement thereof by at least one Government Minister – the Minister in charge of the justice system, represent a threat to the independence of the legal profession in Turkey. Bar Associations should be able to function as independent professional bodies, representing their members, without any interference from the executive or legislative branches of government. We also believe that the criminal investigations seem to suggest that prosecutorial independence may have been compromised in Turkey, which undermines the justice system.

The professional body for solicitors

The criminal investigations launched against these Bar Associations have the potential to erode the separation of powers, as well as the respect for the rights of members of the LGBT community, in what constitutionally is a secular and democratic republic. Bar Associations not only promote the interests of their members and foster professional solidarity with colleagues in other jurisdictions, but it is also their role to speak out against any developments in their jurisdiction that affect the legal profession or human rights and the rule of law more generally. In this sense, the Ankara Bar Association and the Diyarbakir Bar Association – when filing their complaints - have acted in accordance with the purposes for which they were established and have performed their functions in an appropriate manner as any of our respective organisations would do in our own jurisdictions.

Furthermore, we believe that these criminal investigations form part of a broader effort to undermine the independence of Bar Associations, and the legal profession more widely, in Turkey. It has been reported that, after the Ankara Bar Association and Diyarbakir Bar Association filed their respective complaints, the Ministry of Justice and your office proposed to amend the legal framework concerning lawyers and change the election processes of Bar Associations. It is apparently also proposed to establish alternative professional representative bodies. We believe that none of these proposed amendments, directly affecting the legal profession, have been adequately consulted with members of the legal profession or Bar Associations. These measures and proposals, jointly and individually, represent an impermissible interference with the independence of the legal profession that has no place in a democratic society.

In this regard, we remind you of the **UN Basic Principles on the Role of Lawyers (1990)**:

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Freedom of expression

23. Lawyers, like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights. (...)

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

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We respectfully urge the relevant authorities to:

1. Discontinue the criminal investigations launched against the Ankara Bar Association and the Diyarbakir Bar Association with immediate effect and take no further measures against these and other Bar Associations that interfere, or could interfere, with their independence; and
2. Withdraw all proposals to amend the legal framework concerning lawyers and other legislation or regulations that interfere, or could lead to interference, with the independence of the legal profession (either in respect of individual lawyers or lawyers' professional representative bodies).

We will continue to monitor any developments relating to the criminal investigation launched against the Ankara Bar Association and the Diyarbakir Bar Association, as well as the proposed amendments to legislation and regulations, and other threats against the independence of the legal profession in Turkey.

Yours sincerely,

The Law Society of England and Wales

Lawyers for Lawyers

Lawyers' Rights Watch Canada

International Bar Association's Human Rights Institute

European Association of Lawyers for Democracy and World Human Rights

Bar Human Rights Committee of England and Wales

Norwegian Bar Association, Human Rights Committee

Bar Council of England and Wales

Paris Bar, Human Rights Institute

UIA-IROL (The Rule of Law Institute of the International Association of Lawyers)

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cc.

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of England and Wales

ANNEX - SIGNATORIES



The Law Society
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BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND & WALES



AVOCATS
BARREAU
• PARIS



European Association of Lawyers
for Democracy & Human Rights



Human Rights
Institute



Advokatforeningen

Lawyers' Rights Watch Canada



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