

Current Situation Analysis Report on  
Rights Violations Experienced by Human  
Rights Defenders Lawyers in Turkey

# BEING A LAWYER IN TURKEY

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ASSOCIATION FOR ACCESS TO RIGHT TO FAIR TRIAL



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## PREFACE ANDACKNOWLEDGEMENT

We are witnessing a period and conditions in which lawlessness is perpetuated by directly using legal law instruments. In this project, we tried to deal with the oppression and illegal practices imposed on lawyers as the professional group. For, the lawyers are the biggest victim of the deterioration and the highest risk group faced with these comprehensive negativities experienced in the name of law.

This text and the documentary film, which is the product of a year of hard work, emerged as a result of hard work despite all the troubles and obstacles caused by the pandemic. First of all, we would like to thank Mersin, Adana, Diyarbakır, Mardin and Urfa Bar Associations for their support and opinions in the realization of this study. Coordinator of project Prof.Dr. Atilla Güney, the project team consisting of sociolog Ulfiye Özcan, Mehmet Biçer and Serhat Ökmen, documentary film director and media consultant Diren Keser deserve to be thanked for their efforts in the execution of the project and the

preparation of this text and documentary film titled "Being a Lawyer in Turkey".

Finally, we would like to thank lawyer İlhan Öngör and the workers of AYHED (Association for Access to the Right to a Regular Trial) for the initiation of the project, "The Unlawful Practices of Lawyers Defending the Rights of Human Rights Defenders in Turkey". They are the invisible heroes of the project.

Association for Access to Right  
to Fair Trial

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# INTRODUCTION

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Turkey, more than a decade, has been faced with the impact of an authoritarianism spreaded almost to every spheares of society. Although fundamental rights and freedoms are guaranteed by the Constitution, laws regulating fundamental rights and freedoms and international conventions signed by the state, the arbitrary prohibitions against different opposition groups who want to exercise these rights has become the routine practice of the government. In this context, one of the striking points is that it is observed that the exercise of these fundamental rights and freedoms is bilaterally prohibited by the executive and judicial powers. Governorships, district administrations, provincial and district police departments can easily ban meetings, demonstrations and marches, press statements, panels and conferences, and these are interfered with by using violence. On the other hand different penalties including fines, detention, and arrest are imposed on participants. Until today, many kind of research-

es / projects have been prepared on the use of fundamental rights and freedoms and on the people who became victim and subordinates during the human right struggle in Turkey. However, it is striking that almost there has been no works on the lawyers defending rights and freedoms defenders and on the violations, problems and pressures which they faced. Within the scope of this project, what is aimed is to focus on the problems faced by the lawyers of those who are subjected to pressure through the state / government and its law enforcement / judicial power while defending fundamental rights and freedoms and carrying out their profession in Turkey. Lawyers are faced with many obstructions, pressure, legal prosecution, investigation and similar pressures while performing their profession and struggling for human rights as individual rights defenders.

Different occupational groups, civil society organizations and human rights defenders who struggle for rights in different

fields are categorized under the classification of groups at risk. After the state of emergency declared after the coup attempt on 15 July 2016, tens of thousands of citizens from different social stratas and professions were fired from their jobs with Decree Having of Law or arrested, despite the fact that their involvement in any acts of violence could not be proven. The right to a fair trial of many people was violated under the accusation of "terrorism", "propaganda of terrorist organization" or "being associated with and connected with a terrorist organization". And these implications were expanded to the freedom of thought and expression.

Together with increasing authoritarianism, especially doctors, educators, academics, journalists are at the forefront of the professions that are at risk in the struggle for human rights and freedoms. In the face of all these unlawfulnesses, lawyers are the occupational group at the highest risk today.

Even more seriously in all these, today there are many lawyers who have been arrested and held in prison simply for defending basic human rights or directly associated with their defendants while practicing their profession. Unfortunately, we do not have precise data about the number of lawyers who have been investigated, detained or arrested. Because, both the local bar associations and the Union of Turkish Bar Associations do not keep regular and systematic records on their lawyer members. In order to find out the number of detained and convicted lawyers in Turkey, a lawyer registered in the Istanbul Bar Association, submits a petition to the Ministry of Justice and received a refusal in April 28, 2021. Another point is the pressure on the bar associations to which they are affiliated to cancel their attorney's licenses, which is another oppression method on lawyers frequently encountered by local prosecutors and ad-

ministrators.

Until today, there is almost no comprehensive study on the lawyers who are struggling for human rights. With this project, we wanted to observe, analyze, report and document the political pressures faced by lawyers in Turkey and supports these informations with visual tools. What is aimed is to systematize the data that will obtain and make it widespread.

# METHODOLOGY

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The target population of this study consists of lawyers registered in Diyarbakır, Mardin, Adana, Mersin ve Urfa Bar Associations. At the beginning, we have made a primary sociological pre-investigation on lawyers who undertake the defense of citizens who are in the position of defendants in the field of fundamental human rights. Following this, to prepare a questionnaire, interviews were conducted with randomly selected lawyers in these cities. And then, the questionnaire, consisting of open-ended questions have been prepared. This questionnaire was sent to 200 lawyers, by hand, e-mail or via social media. The questionnaire was distributed to these cities equally. Afterwards, we made face-to-face in-depth interview with majority of lawyers. In this phase, we tried to select lawyers who were found to have been exposed to striking events. Video recording was taken for the documentary film. Individual case files have been collected with the permission of lawyers; then investigation documents, bar association disciplinary investigation documents opened against lawyers have been collected. While these studies were continuing, the news about violations suffered by lawyers was collected through written, visual and internet

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media. The records of lawyers about their investigations, law cases registered by bar associations, were collected from the lawyers' rights monitoring centers. Although the research is limited to four provinces, we also included case studies outside of these provinces, which are supposed to reflect the general situation and contribute to the purpose of the project. The project is limited to last ten years. At the end we tried to present the general picture of being lawyer in Turkey. And in the context of human rights and freedoms, we wanted to demonstrate a risk mapping of the rights defender lawyers.

# GENERAL OUTLOOK: THE CONDITIONS OF LAWYERS IN TURKEY

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Starting with 2010s, pressures on lawyers began to decastate with the increasing authoritarianism throughout the country. After the coup attempt on 15 July 2016, 1546 lawyers were prosecuted between 2016 and 2020, 665 lawyers were detained, and 441 were sentenced to 2728 years in prison<sup>(1)</sup>. The heads of the bar associations of seven provinces were arrested<sup>(2)</sup>. 43 lawyers were sentenced to prison in the provinces where this research was conducted. The pressures during the state of emergency were also heavily felt on professional organizations such as lawyer associations and bar associations, and 34 law associations from 20 different cities were closed in total<sup>(3)</sup>. On 12.09.2020,

the Istanbul Chief Public Prosecutor's Office issued a detention order for 51 lawyers who were found to be using FETÖ's encrypted messaging program ByLock and 48 of them were detained<sup>(4)</sup>.



1 <https://arrestedlawyers.files.wordpress.com/2020/07/mass-prosecution-of-lawyers-in-turkey-aug-2020.pdf>

2 Ibid.

3 International Coalition of Legal Organisations, "Common View of Universal Human Right Commission on Turkey", January-February 2020, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename>

4 <https://amp.artigercek.com/haberler/urfa-barosu-gozaltina-alinan-avukatlarin-serbest-birakilmasini-istedi>. 14/09/2020.

18 lawyers, including the Chairman of the Contemporary Lawyers Association (ÇHD) Selçuk Kozağaçlı and lawyer Ebru Timtik, who died on hunger strike while in detention, were accused for membership of terrorist organization in 2017. The lawsuit was concluded in 2020 and the lawyers on trial were sentenced to decades in prison. Intern lawyer Hüseyin Ali Kudret, who attended the funeral of lawyer Ebru Timtik, was terminated by the law firm he worked for(5).



5 <https://www.gazeteemek.net/m/gundem/ebru-timtik-in-cenazesine-katilan-stajyer-avukatin-isine-son-h16749.html>. 29/08/2020

# LAWYERS OF POLITICIANS WHO ARE MEMBERS OF PEOPLE’S DEMOCRATIC PARTY

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Lawyer Levent Pişkin, who met with his defendant, HDP imprisoned former Co-Chair and professional lawyer Selahattin Demirtaş, in prison, was taken into custody on 14 November 2016. In the case filed against Levent Pişkin, the prosecutor demanded that Pişkin must be punished on charges of “terrorist propaganda” and “membership in a terrorist organization”.

In this case, the lawyer’s meeting with her defendant Selahattin Demirtaş was presented as evidence. In the same month, detention warrants were issued for 101 people in the context of operation carried out in Diyarbakır on the grounds that their names were mentioned in some documents of the Democratic Society Congress (DTK). 72 people, 24 of whom are lawyers, were detained. While 22 lawyers were released, 2 lawyers were referred to the court for their arrest. Cahit Kirkazak, the lawyer of former HDP Co-Chair Selahattin Demirtaş, has been

detained. Kirkazak’s family and lawyers were not informed about the detention decision. Kirkazak, held in Edirne Prison, was detained after the police raided and searched her house in the early morning. In this case, the statements that he gave to the press about the Demirtaş case were cited as the reason. Kirkazak had been detained twice for statements he made, once in 2016 and the other in 2019. These lawsuits are still ongoing. The social media posts and statements regarding the innocence of Selahattin Demirtaş were also submitted as evidence for Kirkazak’s case. In the following pages, it will be mentioned that similar investigations have been opened up against many lawyers who undertook the defense of both HDP and HDP’s politicians in the cities in which this project was held.

# GENERAL CONDITION OF LAWYERS IN THE SOUTHEASTERN PROVINCES

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The politics of the Kurdish people, especially held through the HDP and different non-governmental organizations in the eastern and southeastern provinces of the country, is under more pressure from the authoritarianism throughout the country. Likewise, the violations of rights and the pressures faced by human rights defenders are even more intense in the aforementioned regions. As a natural consequence of this general political situation, the advocacy and being lawyer is one of the most at risk profession. This general situation has become more chronic, especially since 2010. The general situation is that the lawyers, sometimes individually, mostly collectively were subjected to investigations and detentions.

On 12 March 2020, 30 lawyers registered to Diyarbakır Urfa, Siirt and Mardin Bar Associations were detained by raiding their homes and workplaces on charges of propaganda for a terrorist organization<sup>(6)</sup>. A lawsuit was filed against six lawyers who made a press statement about their lawyer colleagues in Antalya in 2018. They were detained by the police from their

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home in Antalya for 4 months. Lawyers indictment was not prepared and they were imprisoned for 4 months, on charges of influencing the trial. Eight lawyers were detained as part of the operation against HDP Antalya Provincial Organization executives in 2017. They were judged to being membership of terrorist organization and to making terrorist propaganda. Lawsuit was filed against the previous term Diyarbakır Bar Association president and eleven administrators, under Article 301 of the TCK, for the press release they made about the "Armenian massacre" in April 24, 2019. When a female lawyer, registered with the Dersim (Tunceli) Bar Association, requested a meeting with the prosecutor

<sup>6</sup> <https://arrestedlawyers.org/2020/03/13/mass-arrests-of-lawyers-continues-in-turkey/>

on duty to get information about her defendant whose door was broken into in the middle of the night, she was scolded and kicked out of the room by prosecutor (7).

Şanlıurfa Chief Public Prosecutor's Office, under the name of "Connecting with PKK/KCK Dungeon Committee and Prison Internal and External Coordination", carried out an investigation including 136 people, 75 of whom are convicts, 14 are lawyers, 10 are prison guards and 37 are Kurdish politicians. The meeting of lawyer Metin Özbadem, Hidayet Enmek, Emin Baran, Cemo Tüysüz and Hüseyin İzol with their defendant was described as "Prison external coordination" activities. Public prosecutor prepared an indictment depending on the statements of the secret witness in March 2018. Lawyers' interviews with their client interviews were evaluated as "information transported to terrorist organization". The Prosecutor demanded a punishment about 14 people, including the lawyers, according to Article 314/2 of the TCK, which regulates the "crime of membership in a terrorist organization"(8).

While 17 of the 20 people, including lawyers, who were detained in an operation held in three provinces, were released, three people, including lawyer Sevda Çelik Özbingöl, were arrested. As part of an investigation launched by the Şanlıurfa Public Prosecutor's Office, many people, including lawyers, were detained during house raids in Diyarbakır, Urfa and Şırnak on 12 March. 17 of the 20 people, 10 of whom were lawyers, were released after the prosecution's statement on the condition of judicial control.

Sevda Özbingöl is a lawyer who has been working in the field of criminal and human rights law in Şanlıurfa for many years. She, especially take case files such as dissidents, tortured people and those who lost their life in Suruç explosion. Özbingöl's lawyer made a statement that

"the evidence in the indictment shows that she was arrested due to her professional activities". There are two confidential witness statements. Visiting some people, including lawyer colleagues who were imprisoned for a period, being a member of the Contemporary Lawyers Association, having some magazines and books at home, following accounts such as Bianet and Mesopotamia Haber on social media. She is accused of 'evidence' such as sending letters to women in prison. Her tweets or retweets were also included in the indictment as evidence(9).

On March 1, 2019, at the commemoration event of Tahir Elçi organized by Diyarbakır Bar Association every week, a group of 7-8 people attacked the bar association president, managers, employees and lawyers. After this attack, 55 bar associations declared that "We consider this attack against Diyarbakır Bar Association as a planned and organized attack on all bar associations and our profession" (10). Interior Minister Süleyman pointed the same Bar Association (Diyarbakır) as a target again in September 2019 and accused of being a "terrorist organization spokesman". In response to Soylu's words, the Paris Bar Association pointed out that Soylu's words were not based on any basis, evidence or testimony. They declared that "The tone and insulting statements used by the minister are alarming for the life of our colleagues, the freedom of lawyers and the free exercise of our profession". This example shows that lawyers are not only under pressure from law enforcement and police pressure in the regions where they work, but also they face with harassment and be pointed as target by central government.

Statements and reports published by the Diyarbakır Bar Association have also been the subject of investigations and prosecutions. The statement titled as "April 24: The Great Disaster: We Share the Pain of the Armenian People", and the

7 <https://www.gazeteduvar.com.tr/gundem/2020/07/28/dersim-de-savcidan-kadin-avukata-sozlu-siddet/>

8 <https://amp.artigercek.com/haberler/avukat-hukumlu-siyasetci-136-kisiye-pkk-kck-zindan-komitesi-iddianamesi-14/08/2020>.

9 <https://www.gazeteduvar.com.tr/gundem/2020/08/27/gizli-tanik-beyaniyla-tutuklanan-avukatin-dosyasi-aihmde/>

10 Diyarbakır Barosu, "Saldırıya Uğrayan Diyarbakır Barosuna 55 Barodan Destek Açıklaması", 2 Mart 2019,

quoted sentences made in response to Osman Baydemir's speech in the Turkish Grand National Assembly are accepted as criminal evidence. On the other hand, the previous term Diyarbakır Bar Association President Ahmet Özmen and Board Members Nuşin Uysal, Cihan Ülsen, Mahsum Batı, Neşet Girasun, Serhat Eren, Nahit Eren, Sertaç Buluttekin, İmran Gökdere, Velat Alan and Ahmet Dağ are subject to an investigation due to the report prepared by Bar Association on the death of a civilian in Hakkari with armed unmanned aerial vehicle attack in 2018. In this investigation, these aforementioned lawyers were charged with "to openly incite the people to hatred and enmity" and "insulting the government and institutions of the Republic of Turkey". Later on this investigations turn into a lawsuit in December 2019<sup>(11)</sup>.

Especially in recent years, the statements made by the bar associations, the reports they prepared, and the meetings they have organized in response to social events on issues such as torture, disappearances in custody, violence against women, refugees, LGBTI+ rights, trustee appointments have made them targets as well.

Lastly, the Istanbul, Izmir, for instance, after the Ankara and Diyarbakır bar associations' condemnation of the Directorate of Religious Affairs' negative statements regarding the LGBTI+ community, these organizations once again were subject to new law suit. The prosecutor's office filed a lawsuit against the executives of Ankara and Diyarbakır Bar Associations, who made a statement that the principle of secularism in the constitution was violated due to the words of the President of Religious Affairs about LGBTI+ individuals. On the other hand, after the submission of the bill of law to the Parliament, aimed to change the election procedures of bar associations and the structure of Turkish Union of Bars TBB on 30 June 2020, the statements of many local Bar associations and their meetings were subject to investigations.

The Ministry of Justice granted permission to investigate 11 bar association administrators, including Ankara Bar Association President Erinc Sağan, due to the statement made against explanations of the President of Religious Affairs, Ali Erbaş. Within the scope of the investigation launched against the administrators of the Ankara Bar Association for "insulting the religious values adopted by a section of the public". 11 bar association administrators submitted their joint defense to the Office of the Chief Public Prosecutor. The prosecutor's office sent the file to the Ministry of Justice in the investigation launched against the Ankara Bar Association executives. Then, the ministry gave permission to investigate the bar association executives. After this process, 11 bar association managers, including the president of the bar association, will be summoned to testify and it will be decided whether or not to file a lawsuit<sup>(12)</sup>.

Tahir Elçi, a human rights activist and immediate past president of Diyarbakır Bar Association, who was heavily targeted in the press and public opinion due to his statements within the scope of freedom of expressions and to his declarations to stop the intensive human rights violations, was assassinated and killed in Diyarbakır on 28 November 2015. The case file for the assassination of Elçi could only begin after five years. The heads of the bar associations from different provinces of the country wanted to be defender of

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this law case but their entrance to hearing hall was restrained and most of the lawyer were taken to the hall under the supervision of police blockade.

Another interesting example about pressure on lawyers is the case of Sinan Varlık. Sinan Varlık, a lawyer and director of the United Revolutionary Party (Revolutionary Party), was detained on November 6, 2020 in an operation to his house in Istanbul. Varlık, whose client meetings were considered as evidence for crime, was arrested by the court(13).



13 <https://gazetekarınca.com/2020/11/avukat-sinan-varlik-tutuklandi/>

# CRIME: THE IDENTIFICATION OF LAWYERS WITH THEIR DEFENDANTS

The most common situation that lawyers encounter while carrying out their professional activities is the identified with their defendant. Within the framework of the Anti-Terror Law, lawyers, who undertake the defense of individuals who are on trial for crimes such as terrorist organization, membership, propaganda of a terrorist organization or aiding and abetting are now generally treated on the basis of the crime attributed to the client. This is one of the general case which turned to be a general tendency and which lawyers are faced frequently. The reproach of being identified with the defendant, which is frequently encountered by rights defender lawyers in daily routine criminal cases, was accepted with decision of the Supreme Court. The Supreme Court of Appeals considered "identification of lawyers with their defendants" as a crime. In the decision of the Court of Cassation, it is declared that, "Taking the defense of any

member of a terrorist organization within the scope of the duty of lawyers is legitimate and not prohibited by law. However, if the relation between lawyers with their defendants turned to somehow an act aimed to protect terrorist organization and its members, and if lawyers directs their clients to illegal actions against the security forces and judicial authorities, this cannot be evaluated as protection of individual rights and law of defendants. Such kind of performance exceeding the right of defense, are incompatible with the duty, and it is not possible to evaluate these actions within the scope of the performance of duty." Such a decision of Court of Cassation means the acceptance of the identification of lawyers with their defendants.

# COURT OF CASSATION: IT TAKES A LOT OF TIME TO EXAMINATE THE EVIDENCE!

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Respondent lawyers who are subjected to this decision of the Court of Cassation filed an appeal, stating that the evidence was obtained unlawfully. The Court of Cassation also gave the following decision on this issue: "...There was no clear violation of the law in the decision carried out in accordance with the current law existing during the date of the crime, since the examination of the evidence would require a long period of time apart from normal conditions, and there was no opportunity to take a copy and hand it over to the person concerned at the time of seizure". After this, the joint statement signed by Contemporary Lawyers Association, Lawyers for Democracy, Human Rights Association, Lawyers Association for Freedom Ankara Branch made a joint declaration stating that candidate lawyers who have not yet been convicted are prevented from their profession, and the presumption of innocence is disregarded.

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Lawyers were also arbitrarily prohibited from advocating defendants in cases of certain crimes, due to the changes made in the criminal law. It may be said that these changes strictly affect daily practices of lawyers and increasingly violated the right to make private conversation with their clients. This situation has been interpreted by many law organizations as "to suppress the right to defense and to usurp the licenses of candidate lawyers, who have completed their internships and are entitled to a lawyer's license, by the Ministry of Justice".



# MULTIPLE BAR CODE, ACTIONS AGAINST IT AND LAW SUITS

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While this project was going on, the government introduced a bill, aiming to design multiple bar law, in order to establish alternative bar associations against existing adversary bar associations that did not support the government politically. Thereupon, most of the bar association protested this situation with press statements, demonstrations and marches in their provinces. Within the framework of the actions against this law, more than 50 bar association presidents decided to march to Ankara. Bar association presidents were not allowed into the city at the entrance of Ankara; They were kept under a police blockade at the entrance of the city for days. After this activism process, police investigations

were opened against some bar association presidents and lawyers. The governor's office launched an investigation against 28 lawyers from the Ankara Bar Association for opposing the law on meetings, demonstrations and marches and damaging public property. An investigation was launched

against the Şanlıurfa Bar Association President and 26 lawyers. These investigations were justified by referring to join a sit-in protest and press statement of lawyers against the bill of multi-bar system was introduced as evidence (14). Despite all these protests, the bill of law passed in parliament and the first of alternative bar association was established in Ankara under the guardianship of National Action Party. After the the new law that came into force, since the majority to establish second bar associations could not be achieved in many provinces, lawyers working in the public sector were forced to join new bar associations with threats such as exile. Many lawyers who participated in the protests during the amendment of new bill of law, were systematically deprived of their rights to advocate, such as expertise and conciliation.

Government, on the excuse that Covid-19 pandemic conditions in the country, did not allow the current bar associations to hold their general assemblies and elections at the end of 2020. This decision also gives rise to lawyers protests in many provinces. One of the striking situation occurred in İstanbul. When the lawyers in İstanbul were not allowed to hold the General Assembly of Bar Association, they wanted to issue a press statement in front of the İstanbul Bar Association. The police, who did not allow the General Assembly, here blocked lawyers here as well. The moments of which a police officer swearing to lawyers was caught on cameras. These images were came to fore of country in shorttime.

'Coordination Against Licensing Extortion', organized by professional lawyers' organizations and human rights organizations, reacted to the conditions of intern candidate lawyers who completed their internships and not take licenses. Much of those intern lawyers are under the police investigations and lawsuits car-

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ried out against them. Barış Barışık, who has not been able to obtain a license for two years, said, "Those whose licenses are usurped are condemned to social death."

Non-governmental organizations reacted to intern lawyers's licenses seizure and made a statement titled as "License seizure cannot be separated from attacks on defense" at the Headquarters of the Human Rights Association. Young lawyers from Turkey started keep a watch in front of European Court of Human Rights (ECHR). Lawyers who came together founded the Unconditional Justice Movement in the abroad. The oppression and violation of rights suffered by lawyers in Turkey also resonated at the international level and the struggle was carried out to international platforms. Lawyers, who had to leave the country because they were exposed to political pressures in Turkey, meet in front of the ECHR every Friday.

The Unconditional Justice Movement, which announced its establishment on November; 20 2020, announced that 'despite Turkey being of a party to the European Convention on Human Rights, she violated the articles of the convention'. Hence young lawyers demand from ECHR and the Council of Europe take concrete steps for a solution to the political pressures they are exposed to in Turkey.

Lawyers' representation of certain political opponent figures and human right defenders, their visiting of defendants in the prison, making statements to the press, tweeting about ECHR law cases, communicating with international organizations and criticizing state practices were used as the main grounds for their investigation and conviction. Hence, in order to criminalize the legitimate professional activities of lawyers by using anti-terror law means undermine the rule of law in Turkey. For all these reasons, it may be said that governmental attacks against lawyers and the others working in the field of law in Turkey have systematically resulted in negative consequences for access to fair justice and the rule of law. Therefore it is unacceptable for lawyers to be associated with terrorist organizations while they fulfill their professional obligations to defend their clients. In the period before the coup attempt of July 2016, human rights violations against lawyers were at the alarming rate. But after 2015 this situation became chronic.

Hence the situation is that lawyers in Turkey are open to collectively detained and arrested due to their professional activities and to identification with defendants. The murder of Diyarbakır Bar Association President Tahir Elçi can be given as an extreme example of this situation at individual level. However, associations such as Libertarian Lawyers Association, Contemporary Lawyers Association and Mesopotamia Lawyers Association were closed down by emergency decree laws too. This may be given as an example for pressures which lawyers are faced at organizational level. On the other hand, arbitrary restrictions, exercised by executive on lawyers' ability to represent their

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defendant in police stations, prisons and court halls, are just a few concrete examples of the growing risk and increasing judicial harassment on lawyers in recent years. (15)

The increasing harassment, threats, attacks and pressures on lawyers have also been revealed in reports prepared by international human rights organizations. For example, according to the report prepared by the Council of European Bar Associations and Law Societies (CCBE), as of 13 September 2017, 1343 lawyers are under criminal investigation and 524 lawyers have been arrested since the coup attempt of 2016 (16). In The Front Line Defenders' 2017 report titled "Human Rights Defenders at Risk", it is stated that while all human rights defenders in Turkey are under threat, the main group under threat in 2017 is lawyers (17).

15 <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2961574&SecMode=1&DocId=2397336&Usage=2>

16 [http://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/Turkey\\_-\\_Turquie/2017/EN\\_HRL\\_20170913\\_Turkey\\_Concerns-regarding-18-lawyers-taken-into-custody-in-Ankara-Istanbul-and-Diyarbaki.pdf](http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Turkey_-_Turquie/2017/EN_HRL_20170913_Turkey_Concerns-regarding-18-lawyers-taken-into-custody-in-Ankara-Istanbul-and-Diyarbaki.pdf)

17 <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2017>



# BOSPHORUS UNIVERSITY PROTESTS AND LAWYERS

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In February 2021, A person who was the 3rd candidate from outside the university was appointed as rector to one of Turkey's well-established universities, Boğaziçi by the president. He has also been a candidate in the AKP parliamentary election. This appointment was protested both by academic staff and students and these protestos widening to all over the country after a short time. During these protests, many Boğaziçi University students were detained and some were arrested. Lawyers defending the rights of students who are victims of these democratic actions have also faced with police oppression as well.

Meanwhile, the meeting organized by the Labor and Democracy Forces and İzmir University Solidarity, to support Boğaziçi University students, was not allowed. The police used rubber bullets and

gas bombs against those who wanted to make a statement. It was learned that 51 people, including lawyers from ÇHD and ÖHD, were detained in this attack, and those detained were beaten after their health checks<sup>18</sup>. Lawyers, who took care of the detained Boğaziçi University students, objected to police kept the students in the vehicle in reverse handcuffs. During the brawl, one of the lawyer's finger was broken by police force<sup>19</sup>.

One of the most important topics of judicial harassment against lawyers is the issue of not allowing to newly graduated lawyers to start their internship and their removal from the bar association. Especially after the coup attempt 2016, hundreds of people are prohibited from working as lawyers for an indefinite period on the grounds that they were expelled by statutory decrees. Annual sta-

tistical reports published by the Ministry of Justice reveal the seriousness of the situation. According to these reports published on the website of the Ministry of Justice, 46 files about intern lawyers were sent to the Turkish Bar Association by Ministry for licence decertification. However, this number increased to 96 in 2016, when the coup attempt took place. This ratio sharply increased in later years, to 91 in 2017, 134 in 2018, and finally to 528 in 2019. Although the number of candidate, applying for lawyer licence and granted a license, has increased over the years, the number of files returned to Ministry by Bar association was increaser in accordance with this increase. While only 0.32% of all licence rejection files prepared by Ministry of Justice, were sent back to the Turkish Bar Association in 2008, this number increased to 1.2% in 2016 and 3.56% in 2019<sup>20</sup>. In addition, it is known that there are more than 1000 lawyers who are not deemed suitable to start internships at the end of the 2020.

18 İzmir'de Boğaziçi Üniversitesi öğrencilerine desteğe polis engeli (gazeteduvar.com.tr). 03/02/2021

19 Polis, Boğaziçililere ters kelepçe taktı, itiraz eden avukatın parmağını kırdı – Sendika.Org, 02/02/2021

20 <https://www.adalet.gov.tr/faaliyet-raporlari>

# A GENERAL ASSESSMENT ON THE FINDINGS OF PROJECT

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Within the framework of this project, interviews and open-ended questionnaire were held with over two hundred lawyers. As a result of the research, very striking outcomes were obtained that will confirm the extent of the rapid erosion of the justice system and the disappearance of the rule of law in Turkey, on the lawyers' side. We observed that, within the daily functioning of the justice system, despite the articles regulates the position lawyer with law, lawyers are pushed to a secondary position alongside judges and prosecutors. It is also observed that not only the negativities experienced with law enforcement officers and police in court hall and prison guards, but also houses the unlawfulness encountered during the trial of cases, lead lawyers to distrust towards justice. In the face of the dimensions of the general unlawfulness and the routinization of the violation of fair trial, most of the lawyers are in a mood to get used to the unlawfulness

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*“At first, the majority of my fellow lawyers resisted. However, the Chief Prosecutor did not give up this execution despite the resistance. There has been long queues were in front of the courthouse due to x-ray control and police enforcement and contention in the morning. We were always trying to get this illegal execution reported and recorded. Because of this situation, many of our lawyer friends were being late for their hearings. Thus, most of our friends who opposed thi practice stopped resisting and this search has been normalized over time, as you see it was was taken for granted. Me and a few of my friends still resist search, but now they treat us as abnormal because the illegal situation has been normalized”.*

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towards them. In the words of one of the lawyers interviewed:

“Sometimes, while the people you advocate are tortured and mistreated, you sometimes have to overpass threats against you. Unfortunately, while my client was being tortured and ill-treated, I

have a feeling that my unlawfull experiences during wor was not important. And this feeling transform to an axpousing in due course.”

It can be said that the source of this distrust to justice and the adoption of the negativities towards the lawyer profession is the systematization of unlawfulness towards lawyers at every stage of advocation. This situation is one one of the major outcome of this research. So much so that the pressure applied to lawyers durind the trial, in police departments and prison conversation enlarged to interfere with lawyers’ private life. In this part of the report, we will try to expose the dimensions of pressures on lawyers and violations of rights by giving refence to result of the study on a scale ranging from the simplest to the more complex, from the specific to the general, from the least damaging to the violation of the right tolife.

### **YOUR ID CARDS PLEASE!**

After the July 15, 2016 coup attempt, the court houses were declared by government as almost high-security zones, and together with this decision inspections and controls were increased stiflingly. These measures were applied not only to citizens, but also to lawyers. Despite the fact that the lawyers have the same legal guarantees with judges and prosecutors according to law of advocacy, lawyers have been exposed to discrimination and the has been arbitrarily imposed to body search and enter into x-ray control. Although lawyers often resisted this practice at first, it seems that this situation has got inured over time. A female lawyer who still resists X-ray control used made following statements:

“At first, the majority of my fellow lawyers resisted. However, the Chief Prosecutor did not give up this execution de-

spite the resistance. There has been long queues were in front of the courthouse due to x-ray control and police enforcement and contention in the morning. We were always trying to get this illegal execution reported and recorded. Because of this situation, many of our lawyer friends were being late for their hearings. Thus, most of our friends who opposed thi practice stopped resisting and this search has been normalized over time, as you see it was was taken for granted. Me and a few of my friends still resist search, but now they treat us as abnormal because the illegal situation has been normalized”.

Most of the lawyers who constituted the target group of the research were told that a similar practice was also experienced in client interviews in prisons, and that the work there was even increased to the level of searching lawyers from time to time. What is interesting here is that this practice for lawyers, which is the main component of law, is put into practice by violating the laws themselves, in courthouses, which are places where law and justice will be manifested. This is a situation experienced by all the lawyers interviewed and is now taken for granted. The fact that lawyers show their identity cards to law enforcement officers while performing their profession has gone beyond

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*Lawyers are frequently subjected to verbal and physical violence by law enforcement and prison guards in police stations, anti-terrorism branches and in prisons. All complaints made by lawyers to the prosecutor’s office in this regard nonetheless do not give any result. None of the complaints made by the lawyers about the police officers who harassed them could be concluded. Meetings of lawyers with detained clients are arbitrarily prevented and lawyers actually are in abeyance hours. When the documents related to the file are requested by lawyers, access to these documents is blocked without giving any reason. Violation of the confidentiality of lawyer-client meetings in police stations and prisons is attempted to be routinized despite the given laws.*

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an ordinary security measure and turned into a form of overt harassment and mobbing. So much so that we observed that this situation continued intensely not only at the entrance and exit of the courthouse, but also at the entrance of the courtroom and inside the court. Among the lawyers interviewed, there were quite a number of clashes between the lawyers and the police, who entered the courtroom and were forced to show their identity cards even though they were in their robes and most of them were recognized by the police. Especially in political cases, tensions between the police and lawyers, who enter the hall with their guns against the rules, are frequently encountered during the trial. To give just one example, an un-authorized plainclothes police officer who entered the courtroom with a gun and had to leave the courtroom upon the counsel's warning, might say to lawyer: "We will soon send you to the terrorist you are defending."

The relationship between the police and lawyers, which goes beyond the limits of the law and seems to be becoming more and more routine. In particular, lawyers who deal with political cases and are involved in the unlawfulness faced by rights defenders are not only seen as lawyers practicing their profession. They are sometimes identified with their clients and the crime charged to them. Lawyers mostly shared with us a general tendency of policy to them and said that clients make sentences such as "...after the end of conversation with lawyer, police ask clients that: did he/she not find another lawyer, if this lawyer remains, he/she will be punished for sure, this lawyer is the lawyer of the terrorists, change your lawyer". Lawyers can define this situation as harassment or mobbing through their clients. The same attitude and situation is generally observed during the prosecutorial interviews. According to the statements of the lawyers, the attitude of the

prosecutors towards the lawyers dealing with political cases is very different, sometimes implicitly and often directly, there are dialogues such as "why are you looking at these cases, why are you dealing with terrorist cases or are you appointed by terrorist organization as lawyer?"

The identification of the lawyers with clients and the crime charged to them results in the judgment that they are member of terrorist organization, and the lawyer serving the defendant is also a member of the organization. For example, about 8 lawyers who were detained in Mersin at the same time in 2017, despite the confidentiality decision in the file, the prosecutor can make a statement to the press with the headline "We have seized the PKK/KCK law cell" one hour after the lawyers were detained. Following this heavy accusation, the lawyers in question were released after 4 days of detention. This situation faced by lawyers is not only to cause difficulties, but also a police attitude towards not having the profession. After filing a criminal complaint against the police officers who filmed and documented that their detained clients were tortured and participated in the torture. After this information was shared with the press, many lawyers were prosecuted on charges of discrediting the officer, lying and slandering them.

Lawyers are frequently subjected to verbal and physical violence by law enforce-

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*One of the important points emphasized by lawyers is that the statements taken at police stations and police reports are copied and turned into indictments by the prosecutor's office. In this case, unfortunately, it seems to have become routine and taken for granted. The judge brought the decision in a flash memory and had it copied by the clerk; therefore, one of the results of this research can be emphasized as the perception that the decision has already been taken before the hearing, no matter what the defense does or whatever evidence it presents.*

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ment and prison guards in police stations, anti-terrorism branches and in prisons. All complaints made by lawyers to the prosecutor's office in this regard nonetheless do not give any result. None of the complaints made by the lawyers about the police officers who harassed them could be concluded. Meetings of lawyers with detained clients are arbitrarily prevented and lawyers actually are in abeyance hours. When the documents related to the file are requested by lawyers, access to these documents is blocked without giving any reason. Violation of the confidentiality of lawyer-client meetings in police stations and prisons is attempted to be routinized despite the given laws.

Especially when lawyers who go to the defense of their clients through the Human Rights Association try to report the violation of this confidentiality and take it into a record, they also faced with serious problems. After the lawyers' resistance to the placement of cameras and audio recorders in the meeting rooms without the permission and knowledge of the lawyers, mutual problems, sometimes including physical violence, come to the fore. There is a double standard among those who come to the stage of complaining about the problems between the police or prison administrators and lawyers. While almost all of the complaints made by lawyers end in dismissal by prosecutors. After then police took reports and quickly started to open investigations against lawyers who reported unlawfulness witnessed in police station and prisons.

# COPY AND PASTE JUSTICE

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One of the remarkable findings during the research is that the majority of lawyers emphasized that the law enforcement agency, which should be directly subordinate to the prosecutor's office. One of the important points emphasized by lawyers is that the statements taken at police stations and police reports are copied and turned into indictments by the prosecutor's office. In this case, unfortunately, it seems to have become routine and taken for granted. The judge brought the decision in a flash memory and had it copied by the clerk; therefore, one of the results of this research can be emphasized as the perception that the decision has already been taken before the hearing, no matter what the defense does or whatever evidence it presents.

Harassment of judges in political cases, breaking the defense by saying that there isn't enough time short are among the situations that lawyers frequently encounter during the court process. When

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*"During the trial, there are judges who give the pre-prepared decision to the clerk in the external disc and print it out, without allowing the clients to gather evidence, listen to the witnesses. Hence, use of the right of defense is generally violated by not allow the clients to make a written or oral defense. One of the lawyers statement: "You are not seen as a lawyer, but as representatives of a particular political view. How will you defend the rights of others when you are helpless even in the face of what happens to you as a defense pillar?"*

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lawyers, who should have equal rights with the prosecutor, criticize the prosecutors during the hearing, they face the intervention of the judges: "You can't talk to the prosecutor like that. You can't address the state's prosecutor in this way." Warnings against lawyers are also frequently encountered.

The perception that decisions in political cases are made in accordance with the rules of law, not according to the evidence in the file, but according to the

information received from the law enforcement police and the interior ministry seems to have become widespread. In political cases, not only violations of rights, but also insults to defendants, witnesses and lawyers, and interruption of the word exceeding the limits of respect are frequently encountered. A lawyer's statement: "During the trial, there are judges who give the pre-prepared decision to the clerk in the external disc and print it out, without allowing the clients to gather evidence, listen to the witnesses. Hence, use of the right of defense is generally violated by not allow the clients to make a written or oral defense. One of the lawyers statement: "You are not seen as a lawyer, but as representatives of a particular political view. How will you defend the rights of others when you are helpless even in the face of what happens to you as a defense pillar?"

As is known, the complaint authority against judges and prosecutors is the High Council of Judges and Prosecutors (HCJP). No any investigation permission is given to any of the judges, prosecutors and prison prosecutors who were complained by lawyers to the HCJP in the context of unfair investigations opened against them. It can be said that since lawyer couldn't achieve any result from their complaints about the rights violations they are exposed during the trial, this situation leads them to intimidation. This state of despair has become so gangrenous that lawyers do not even consider taking these processes to the Constitutional Court and/or

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*Records of our conversations, correspondence with our defendants whether they are in prison or abroad, must be private and confidential. It cannot be controlled in any way, but especially with the legal changes made after the coup attempt of 2016, our interviews with our clients in prison from time to time were recorded. The notes we kept during the interview with our clients in the prison were confiscated by a court decision.*

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the European Court of Human Rights.

It is noteworthy that a systematic anti-propaganda carried out by law enforcement police against lawyers dealing with political criminal cases is frequently voiced by lawyers. It was emphasized that in addition to political lawsuits that could not bring much financial return, lawyers who try to get income-generating lawsuits to maintain their lives have difficulty in finding clients. This frustration has become such that we observed that most of the lawyers did not even aspire to additional income generating duties such as mediation, expert witness and conciliation. Moreover, lawyers who make such requests are also faced with the answer that "as a result of the police investigation, it has been decided that you do not meet the conditions for mediation".

From an interview with a lawyer: "As a lawyer who takes part in the defense of the law, how can I be a lawyer for human rights defenders when I am so helpless even in the face of the unlawfulness. I have experienced myself that I no longer believe in it". "I was interned many times for insulting the prosecutor because I said in court one day that the prosecutor did not examine the file sufficiently, and he is on a heavy sentence. I was sentenced for 6 months. Because, we are not the equal position with prosecutor in the eye of adjudicator. The courts no longer listen to you. You do not have any function other than psychological support for your client during the court process. The judge looks at the file before the hearing; makes his decision and listens to both witnesses and lawyers according to police inquiry report".

It is strikingly significant that there are high numbers of discussions between judges who do not listen to lawyer during the hearing and are interested in other things. Judges do not consent to these discussions to be recorded in court doc-

ument and they can quickly initiate an investigation against lawyers afterwards. The number of lawyers who are being investigated is increasing due to the discussions between judges and prosecutors in the courts.

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*almost all of the lawyers mentioned that situations such as telephone tapping, monitoring social media accounts, and unauthorized tapping of phone calls with defendants are now have become a routine. In the prosecution indictments of almost all of the lawyers against whom a lawsuit has been filed, the records of the telephone conversations they had with their defendant and other lawyer colleagues were included as criminal evidence. Not a few number of lawyers are prosecuted due to the notifications and posts on their social media accounts.*

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On of the important outcome of this project meetings is that judges and prosecutors who try to implement justice and act in accordance with the right to a fair trial are also under threat as much as lawyers: A lawyer's statement: "18 of our Progressive Lawyer Organization colleagues were detained, then after were released. Before 12 hours passed, the same court reversed its decision. Again, it issued an arrest warrant for our colleagues, and this delegation was dispersed the next day; each judge who at first decides to release lawyers was exiled to diffrenet places.

# SOMEBODY SURVEILLING LAWYERS

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In the interviews held with 200 lawyers in four provinces within the scope of this project, we encountered the striking findings of the lawyers dealing with criminal cases regarding their own professional status:

Most of the lawyer stated that; “to be a lawyer in political criminal cases is a problem in itself, and a risk in Turkey. In the case of political criminal cases, we generally deal with the security units working in anti-terrorism branch. When you go to the anti-terrorism police department as the special lawyer of a suspect who has been detained, there is a situation such as your client or persons under custody were directly identified as terrorist by the police. Unfortunately, law enforcement police approaches to the lawyer somehow like suspected persons.

Especially when lawyers who are known as professionalized in political criminal cases want to defend political detained person, law enforcement police prefer to

not meet lawyer and detained person. This is done in a way that by putting pressure on the detained person to reject lawyer or force to sign statement that to the lawyer to be rejected. As one of lawyer stated: “I was appointed as lawyer by the family of political detained. When I went to police department to meet my client, this person does not want to meet with me. And later on I would have known that he is forced to sign a statement to reject my lawyer”.

Another interesting statement of lawyer: “When we want to see doctor’s reports, these reports actually couldn’t give us by putting forward a reason that reports are not ready. When we observed that pounding marks in the body of our clients are not reported health report, actually we try to record torture through our own means. And in this case police strongly trip our effort up”. The lawyers mostly complain that when the suspicion about the torture and ill-treatment of their cli-

ents are made voice, the they have entered have not yielded any results:

“Especially all of my complaints about the torture and ill-treatment of some of my clients resulted in non-prosecution in the last 3 years. All of my objections to these non-prosecutions were rejected and all these files are now before the Constitutional Court. I have not yet received any results from the complaints that I made to the HCJP regarding the judges and prosecutors who signed these unlawful proceedings and decided to carry out these proceedings. Records of our conversations, correspondence with our defendants whether they are in prison or abroad, must be private and confidential. It cannot be controlled in any way, but especially with the legal changes made after the coup attempt of 2016, our interviews with our clients in prison from time to time were recorded. The notes we kept during the interview with our clients in the prison were confiscated by a court decision.

If we give a striking example on this issue; a female lawyer who meets with her client in Diyarbakir prison is forced to give a copy of her notes to the prison administration after the meeting. The lawyer, who refuses this, is kept in prison for hours under the blockade of the prison guards. During this deforcement, lawyer has tried to save the documents and has been freed of by intervention of his lawyer colleagues outside of the prisien. She said that durin conversation: “This naturally puts us under a lot of pressure while doing our job as a lawyer. Because of this, when we met with our client, we could not take note of anything specific about his file that our client told us. Because we know that this note will be confiscated. This situation, in itself, is actually a pressure on our profession.”

Such situations evaluated by lawyers not only as harassment and mobbing to

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*“They raided my house at five o’clock in the morning. During the house search, they broke into my three-year-old’s child room and even searched his toys one by one. They searched even behind of the paintings on the wall. At the end, ‘we were hoping to find a lot in your home, they said, but we were disappointed”.*

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lawyers, but also as discreditation of prevention profession by instilling fear. There are many forms of this discreditation and installation of fear have been observed and presented by lawyers throughout the research. For instance, almost all of the lawyers mentioned that situations such as telephone tapping, monitoring social media accounts, and unauthorized tapping of phone calls with defendants are now have become a routine. In the prosecution indictments of almost all of the lawyers against whom a lawsuit has been filed, the records of the telephone conversations they had with their defendant and other lawyer colleagues were included as criminal evidence. Not a few number of lawyers are prosecuted due to the notifications and posts on their social media accounts. In our research, actually a quarter of the lawyers who were target of poject declared that they object to police investigation and criminal file case dute to phone records and social media posts. In addition, social media posts are frequently used as evidence in the files of lawyers who are prosecuted for membership or propaganda of a terrorist organization. What is striking is that almost all of the lawyers think that they monitores by secret intelligence. Although there is no concrete data about this surveillance, lawyers notice that they realize it from their their private life, family and friendship relations, and fron membership of non-governmental organizations, Much of the lawyers we interwieved stated that, the police both in court hall, prison and police department allude to collect information about them. A striking state-

ment of lawyers regarding the collection of intelligence information about lawyers: "The police have shown a list of lawyers to a citizen who was detained under the anti-terror law and later became my client. My client said that there existed your name also in this lawyers list. And, he said that police submit a recommendation such that if he choose one of these lawyers, h will definitely be punished, since in the eyes of judges and prosecutors these lawyers are known as the lawyers of terrorists. Later, aforementioned police if he wants, department could find another lawyer for him."

# POLICE RAID TO LAWYERS' HOME AND OFFICE

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One of the challenges that lawyers encountered is the home, office and even their cars raid by law enforcement police forces. Lawyers against whom investigations have been made and who have warrants of arrest are taken into custody, usually at dawn through raids on their homes. While these raids must be accompanied with a prosecutor according to the law of attorneyship, they are mostly carried out by the police without a prosecutor. A Lawyer statement:

"They raided my house at five o'clock in the morning. During the house search, they broke into my three-year-old's child room and even searched his toys one by one. They searched even behind of the paintings on the wall. At the end, 'we were hoping to find a lot in your home, they said, but we were disappointed".

Although these detentions or arrests can be carried in normal daily times, the selection of night hours and the detention of lawyers through house raids cannot

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*"My house was raided by special forces one night. I didn't need to tell them that I was a lawyer, they already knew. I told them that they should make this call in the presence of the prosecutor, and they did not listen to me. When I persisted in my objections, they put a gun to my neck in front of my children. When my wife objected to this situation, she was exposed to the same treatment. I was taken to the counter-terrorism branch with handcuffed. I was in the same ward in police department with my client, whom I had gone to for a lawyer interview the day before."*

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only be explained by mobbing or intimidation alone. It is also a message to the social circle of lawyers. As a matter of fact, the lawyers stated that after such raids, the view of their neighbors changed. And these home and office raid even leads to a decrease in the number of their clients. In other words, it's also part of a strategy to financially punish lawyers. As a matter of fact, many lawyers we interviewed stated that being a lawyer of political detain-

eed does not bring any benefits, that they have to deal with profitable cases in order to continue their life, but they have difficulty in finding clients due to these experiences.

“We, eight lawyer colleagues were detained with a house raid at midnight. I have met with prosecutor who takes detainment decision for me in the court house. Even though an arrest warrant was issued for me while I was following my cases at the courthouse at the same day, they prefer to raid my house and arrested me at midnight.”

This statement is the lightest description of what happened. There are also more violent situations:

“My house was raided by special forces one night. I didn’t need to tell them that I was a lawyer, they already knew. I told them that they should make this call in the presence of the prosecutor, and they did not listen to me. When I persisted in my objections, they put a gun to my neck in front of my children. When my wife objected to this situation, she was exposed to the same treatment. I was taken to the counter-terrorism branch with handcuffed. I was in the same ward in police department with my client, whom I had gone to for a lawyer interview the day before.”

Even more striking is the statement of a lawyer who was accused of being member of a terrorist organization:

“I was detained due to statements made to by the Minister of Interior in connection with an terrorist attack in Istanbul. I was taking to the hospital for a rutin checkup. The police did not want to untie the handcuffs during the doctor’s health control. After my and doctor’s insistence, they had to untied the handcuffs. After the health control, they wanted to put me in the prison vehicle with reverse handcuffs. I resisted because it was illegal. Doz-

ens of police officers rushed at me inside the hospital and forcibly handcuffed and put me in the prison vehicle. Afterwards, file case throw out for lack of evidence; yet I have been detained only with reference to pointment of Minister to me as target. After I was acquitted, I filed a complaint against the polices who used this violence against me. But none of them were prosecuted”.

# THE EXCEPTIONAL SITUATION OF LAWYERS DEALING WITH FEMALE MURDERERS AND VIOLENCE AGAINST THEM, CHILD VIOLENCE AND LGBTI+ CASES

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During the project, it was observed that the problems faced by the lawyers who deal with cases of violence and sexual abuse against women and children, are slightly different. In such cases, lawyers state that they are mostly exposed to verbal or physical violence by the accused persons and/or their relatives during the court process. Moreover, they mostly complained from both the law enforcement forces and judges during police investigation and court proceeding. On the other hand, the problem of violence and abuse against women and children has become an increasing social problem in Turkey in recent years. We observed that investigations were frequently launched against lawyers who shared the events and the court process with the press and the public in order to raise awareness about this

situation and create public opinion.

A lawyer, who was exposed to threats and accusations from both the judges and the accused's family during the trial of child sexual abuse, requested help from the provincial bar association. After then, a lawsuit is filed against her for influencing the court process due to his statements to the press; An application was made by the Ministry of Justice for the cancellation of her license to the bar association. So much fear was created on the aforementioned lawyer that, despite all our efforts, he refused to answer our questionnaire or have a face-to-face interview.

Lawyers, although they are one of the the founding elements of the judiciary-system, they frequently stated that lawyers have to explain their important role within the system. They have complained

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*There are many lawyers who have been complained to the bar association or investigated for the cancellation of their attorneyship license not only because of their profession as lawyers, but also because of the reports prepared by commissions for being members of democratic non-governmental organizations and for their activities within these organizations.*

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about being seen as a necessary step for the system to work. So much so that when they do their job in a lawsuit, they are accused of prolonging the process and escalating the events. For example, female lawyers, working in the women's and children's rights commissions of the bar associations in the provinces where we conducted during the project, stated that police investigations were frequently initiated against them because of the reports on women and children violation they prepared and shared with media and press.

The situation of rights defender lawyers dealing with LGBTI+ cases is even worse. Since LGBTI+ individuals think that the prejudiced attitudes of the courts against them will not change, they prefer not to complain about the injustice they experience, mostly due to financial reasons. The LGBTI+ lawyers emphasized that the process mostly ended at the police station.

# COMPLAINTS OF MINISTRY OF JUSTICE TO BAR ASSOCIATION, CASES FOR CANCELLATION OF LAWYER LICENSE

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We observed that one of the most important pressure tools faced by lawyers in the process of advocacy is complaints to the bar association and investigations regarding the cancellation of their lawyer licenses. Generally, lawyers who are accused of being member of a terrorist organization or making propaganda of a terrorist organization, are first subjected to criminal law suit and then the law suit files sends to the bar associations for concellation of lawyer licence. According to law of lawyer, in order to open an investigation about lawyer, permission of the Ministry of Justice must be needed. The complaints of lawyer to bar association for concellation of lawyer licence are concluded faster than that of hudgets and prosecutors to the Ministry of Justice. Although almost all of the complaints made to the bar association result in non-prosecution, it is noteworthy that this mechanism is also used as a means of pressure on the rights of lawyers. There are many lawyers who have been complained to the bar association or investigated for the cancellation of their attorneyship license

not only because of their profession as lawyers, but also because of the reports prepared by commissions for being members of democratic non-governmental organizations and for their activities within these organizations. For example, we observed that bar associations are frequently investigated because of the reports prepared by lawyers working in women's and children's rights commissions and sharing these reports with the public. Another point that needs to be emphasized is that membership in non-governmental organizations other than the bar association is accepted as a criminal evidence t in the investigation files opened for lawyers who are prosecuted. In the indictments prepared against the lawyers, who were prosecuted and shared their files with us, participation in the actions of non-governmental organizations such as the Libertarian Lawyers Association, the Contemporary Lawyers Association, and the Human Rights Association along with participation in the actions of these organizations is included as criminal evidence.

# LAWYERS WHO DETENDED, ARRESTED AND SUBJECT TO LAWSUIT

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At the end of the project, we observed that, although it varies according to the provinces, almost half of the 200 target lawyers have been prosecuted, object to investigation, detained, arrested and tried without passion at least once in their professional life. The lawsuits filed against lawyers who are subjected to pressure under these headings also differ.

To summarize, these reasons can be listed under several headings:

Lawyers of both Peoples' Democratic Party (PDP) and of members of this party are subjected to arrestment and law suit for being member of terrorist organization or terror propaganda. Lawyers of ex-co-chair of PDP, Selahattin Demirtaş are often subject to investigations and lawsuits.

Lawsuits brought against lawyers who report and/or reflect to press the tortured of their clients in prison or in the anti-terror police branch.

Lawsuits filed against lawyers and intern lawyers for their social media posts and shares.

Lawyers who are judged for insult the president. Lawyers who are judged for the meetings, demonstrations and press statements they attended during the rights advocacy process.

Lawyers who are on trial and subjected to investigation with the charge of resisting the police officer officers' unlawful operations during the client meetings in the anti-terror branch.

Lawyers who are subject to investigation because of their objection to judicial processes.

Those who are prosecuted for insulting the prosecutor or judge, contempt of court, on the grounds of their dialogue with the prosecutor or judges during the court. A striking example was the case brought against the President of the Diyarbakır Bar Association on the charge of

“pointing the judge of the court as a target to terrorist organizations”, which was brought against him due to a tension in the court while this investigation was going on.

Lawsuits filed by considering membership in non-governmental organizations of which they are members or being a manager. As stated above, membership or management in organizations such as the Contemporary Lawyers Association, the Libertarian Lawyers Association, and the Human Rights Association are subject to investigation.

Making a statement to the press about the ongoing law case is often the subject of a lawsuit.

Addressing some of the questions in the investigation process of the lawyers who were detained in the interviews with the lawyers will reveal how the pressure on the rights defender lawyers. Lawyer-client identification and the potential criminalization of the lawyers of the political

criminal case are taken for granted. Some of the questions that lawyers face during the interrogation: Where and when did you do your internship with which lawyer? What types of cases have you served as a lawyer so far? How do your clients reach you in the files you represent? Do you make contracts with your clients? How many clients have you contracted so far? How do you collect your fees from your clients? What is your relationship with this person? Why didn't you charge him? Why do you want to change your client's statement? What is your purpose in going out of the province with your colleague lawyer? Which private schools did you go during your education life? What is your relationship with aforementioned persons in in your phone call? What kind of relationship do you have with person who catches to technical surveillance?

And it is possible to multiply these questions.

# QUANTITATIVE DATA ANALYSIS OBTAINED REGARDING THE PROVINCES WHERE THE PROJECT WAS CONDUCTED

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This study was carried out in Mersin Adana, Diyarbakır, Mardin and partly Şanlı Urfa provinces. A total of 200 lawyers were selected as the target population. We applied questionnaires to this population either face-to-face or via the internet and social media. After the in-depth interviews with over 50 lawyers, including at least 10 lawyers in each province, audio and vid-

eo recordings were performed with these 50 selected lawyers. In the introduction, we tried to make a general evaluation on the situation of lawyers in Turkey regarding the pressures they face while carrying out their profession. Here, we will try to make a general summary of the outcomes obtained in the five provinces where the research was conducted.

# MERSİN

Mersin is one of the most important big cities of Turkey with its population exceeding 1.5 million. Mersin has constantly received internal and external migration (in recent years, Syrian immigrants and refugees) throughout her history. For this reason, she has multicultural structure, both ethnically and religiously polymorphic fabric. And this peculiarities lead to politically active population in the context of the struggle for human rights, considering its unique multicultural structure. For all these reasons, it is one of the cities where the lawyers who defend human rights are both high in number and where the workload of these lawyers is intense. In this section, we tried to identify and scale the situations faced by the rights de-

fender lawyers, which we aimed to measure through the example of the problem applied in four provinces. The criteria for oppression, harassment and violation that we have identified are: The problem of showing identity card in courthouses and/or prisons; illegal recording; illegal wiretapping; surveillance of social media accounts; pressure and harassment in police interrogation and client interviews; unfair practices in prison negotiations; those who are complained to the bar association by the prosecutor's office; car, home, office searches; lawyers who are subjected to lawsuits; lawyers who are arrested; detained lawyer; lawyers whose sentence is executed after the lawsuit.

|   |    |
|---|----|
| 1.Lawyers who get into showing identity card trouble in court houses and prisons                  | 50 |
| 2. Lawyers who thought that they are recorded illegally   | 30 |
| 3.Lawyers who thought that they subject to illegal wiretapping                                    | 25 |
| 4.Lawyers who are subject to surveillance of social media accounts                                | 20 |
| 5.Lawyers who complaints to Bar Association by prosecutor   | 5  |
| 6.Lawyers who are subjected to police harrasment and violance during clients interviews           | 16 |
| 7.Lawyers who get into trouble with prison administration and prosecutor office                   | 11 |
| 8.Lawyers who are subjected to car, Office and home searc   | 8  |
| 9 Lawyer who ared subjected to law suited   | 9  |
| 10 Lawyers who are arested and dettained  | 8  |
| 11.Lawyers whose sentence is executed   | 4  |
| 12.Lawyers who are subjected to more than one item (5., 6., 7., 8., 9., 10., 11.) mentioned above | 11 |

Despite the fact that the obligation to show identity and pass X-ray devices to lawyers, both in prisons and at the entrance to courthouses or police buildings, was actually put into practice despite the law of attorneyship. At first, the majority of the lawyers reacted to it, but later on, it was understood that only a few lawyers still do this. It can be said that there are very few lawyers who resist this practice. The high level of responses to questions such as illegal recording, technical follow-up, illegal wiretapping, and monitoring of social media accounts can be interpreted as an indication of mental mobbing and distrust with the rights defender lawyers, apart from physical and visible pressure.

Although the answers to the questions that followed, such as investigation, detention, arrestment, etc., seem relatively low, they are striking in terms of revealing the gravity of the situation. On the other hand, since the research period is limited to the years 2013-2021, we would like to share our observations that this number will increase when we go back in time and interview lawyers who are relatively in the profession. In addition, the gradual decrease in the number of lawyers dealing with the criminal cases of citizens who have been violated can be interpreted as a result of the fact that such pressures are concentrated on certain lawyers.

# ADANA

Adana is a larger city than Mersin, in accordance with population density and the number of lawyers registered with the bar association. However, it is a city that has close similarities with Mersin in terms of its multicultural structure, constant immigration and activation of human rights lawyers.

|   |    |
|---|----|
| 1.Lawyers who get into showing identity card trouble in court houses and prisons                  | 50 |
| 2. Lawyers who thought that they are recorded illegally   | 15 |
| 3.Lawyers who thought that they subject to illegal wiretapping                                    | 17 |
| 4.Lawyers who are subject to surveillance of social media accounts                                | 19 |
| 5.Lawyers who complaints to Bar Association by prosecutor   | 2  |
| 6.Lawyers who are subjected to police harrasment and violance during clients interviews           | 10 |
| 7.Lawyers who get into trouble with prison administration and prosecutor office                   | 8  |
| 8.Lawyers who are subjected to car, Office and home searc   | 1  |
| 9 Lawyer who ared subjected to law suited   | 4  |
| 10 Lawyers who are arested and dettained  | 3  |
| 11.Lawyers whose sentence is executed   | -- |
| 12.Lawyers who are subjected to more than one item (5., 6., 7., 8., 9., 10., 11.) mentioned above | 3  |

Based on the findings of the Adana research, we can say that there is a stronger resistance to the compulsion showing identity card and passing through the X-ray search device than in other provinces, and that this resistance is still partially continuing. Apart from this, it is seen that the answers given to the questions about other items are strikingly low when com-

pared to Mersin. As a result of the interviews with the lawyers working in Adana, it can be said that there are several reasons for this positive view for the lawyers. First of all, when compared to Mersin, there is more organic solidarity between lawyers and the bar association administration in Adana, which shows that lawyers can easily solve their problems with

the police and in prisons through the bar association lawyer's rights center.

In addition, it was striking that solidarity networks between lawyers were more strongly established within civil structures such as the Contemporary Lawyers Association, the Human Rights Association and the Association for Access to the Right to Fair Trial (AYHED). Another point that should be emphasized is that both the average age and professional experience of the rights defender lawyers interviewed in Adana, their visibility and influence in the social and political life of the city are also effective in these results. Another point that should be emphasized at this point is that it can be said that the resistance against the imposition of showing identity and going through the search device is higher and more continuous in women lawyers than in men, both in Mer-

sin and Adana. By the way, it should be noted as a remarkable fact that while one of the spouses takes the criminal cases of the clients who have been violated, the other deals with more commercial cases, especially in married couples whose spouses are also lawyers.

We asked lawyers in both provinces why you felt the need to become a member of a non-bar association (such as Contemporary Lawyers Association, Libertarian Lawyers Association). We received the answer from almost all the interviewing lawyers that bar associations are public and semi-official professional organizations, and because of this structure, they are inadequate when it comes to human rights advocacy, and therefore they need a theory of solidarity organizations outside the bar association.

# DIYARBAKIR

“Almost every family in Diyarbakir has a tragedy in the context of human rights violations. In this context, the profession of lawyer has a special and unique place when it comes to Diyarbakir. Diyarbakir is almost a laboratuar city for human rights violations”. These sentences belong to the Diyarbakir bar association president. The profession of lawyer has been so criminalized and excluded by the state in Diyar-

bakir that unlike other cities in Turkey, Bar Association buildings are located outside the palaces of justice hall in both Diyarbakir and Mardin. This physical separation is also an indication of the role assigned to law enforcement in these cities. As such, advocacy has become a profession that struggle for human rights in the social arena beyond a lawyer-client relationship in these twocities.

|   |    |
|---|----|
| 1.Lawyers who get into showing identity card trouble in court houses and prisons                  | 50 |
| 2. Lawyers who thought that they are recorded illegally   | 50 |
| 3.Lawyers who thought that they subject to illegal wiretapping                                    | 50 |
| 4.Lawyers who are subject to surveillance of social media accounts                                | 50 |
| 5.Lawyers who complaints to Bar Association by prosecutor   | 2  |
| 6.Lawyers who are subjected to police harrasment and violance during clients interviews           | 40 |
| 7.Lawyers who get into trouble with prison administration and prosecutor office                   | 40 |
| 8.Lawyers who are subjected to car, Office and home searc   | 20 |
| 9 Lawyer who ared subjected to law suited   | 40 |
| 10 Lawyers who are arested and dettained  | 50 |
| 11.Lawyers whose sentence is executed   | 5  |
| 12.Lawyers who are subjected to more than one item (5., 6., 7., 8., 9., 10., 11.) mentioned above | 11 |

In fact, the violations of lawyers in Diyarbakir have become so chronic that while we were conducting interviews in the city within the scope of this project. During this project, 28 lawyer were objected to law suit for membership of terrorist organization. Again, a lawyer who was the head of the Diyarbakir bar association in the past, with whom we spoke,

was sentenced to 6 years and 3 months in prison for membership of a terrorist In fact, the violations of lawyers in Diyarbakir have become so chronic that while we were conducting interviews in the city within the scope of this project. During this project, 28 lawyer were objected to law suit for membership of terrorist organization. Again, a lawyer who was the

head of the Diyarbakır bar association in the past, with whom we spoke, was sentenced to 6 years and 3 months in prison for membership of a terrorist organization a few days after we met with him. After movements against the multiple bar law, the Diyarbakır bar maintained its position and an police investigation was launched against the lawyers who participated in these movements.

Again, when we ended the fieldwork the news about the detention of lawyers in Diyarbakır continued to come. Diyarbakır Chief Public Prosecutor's Office launched an investigation against the Association for Assistance, Solidarity and Culture (ME-BYA-DER) with Families Losing Their Relatives in the Cradle of Civilizations in Mesopotamia on March 09, 2012<sup>1</sup>. When 18 lawyers deputized by the executives and members of the association, who were prosecuted within the scope of the investigation, went to the police station to meet with their clients, they learned that an ex officio investigation was initiated against them without obtaining permission from the Ministry of Justice.

Although, according to the Law on Advocacy, permission from the Ministry of Justice is required for lawyers in crimes related to their profession, there are lawyers whom we interviewed before within the scope of this research, were investigated without permission.

The first hearing was held when we were in Diyarbakır during this research, which was opened from the press release on the Armenian massacre about the entire (about twenty) of the current bar association executive board that was in office while this study was being carried out. The lawsuit filed against lawyer members of bar association lawyers due to the report prepared by the bar association on the death of civilians in a village by an unmanned aerial vehicle in Hakkari continued. All of the previous bar association

board members continue to be prosecuted for the press statements they made as the board of directors and the rights violations they prepared. Again, all current members of the board of directors of the bar association are on trial with the accusation of "insulting the religious belief of the people" due to the press statement made by the President of Religious Affairs against the hate speech towards LGBTI+ individuals.

Even the works that are among the routine activities prepared by the Diyarbakır Bar Association Human Rights Commission, Women and Children's Rights Commission are subject to the prosecution investigation. All the members of the board of directors of the Bar Association are on trial for the report prepared by the Diyarbakır Bar Association Human Rights Commission on the bombing of a village in Hakkari by an unmanned aerial vehicle. Lawyers who are members of the Diyarbakır Bar Association Women and Children's Rights Commission are on trial for the reports they prepared and for sharing these reports with the public.

At the time of this study, there were more than 10 lawsuits against members of the Diyarbakır Bar Association. In addition, there are many investigations opened against the members of the previous board of directors. We have heard from almost all of the lawyers we interviewed that the investigation files prepared against them without their knowledge are kept on hold, that these files will be processed when the time comes, and that they are prepared for this. The lawyers, who constitute the third pillar of the justice system, should be confronted with the physical and moral violence of the police during their daily professional activities, and the indifferences of judges and prosecutors to these pressures should be more striking.

# MARDİN AND ŞANLIURFA

Although the situation of the lawyers interviewed in Mardin and Urfa is partially similar to Diyarbakır, it can be said that it is somewhat more positive. Due to the trench process in Mardin in 2015 and the blockade of the districts by the security forces, it was observed that the lawyers who tried to detect the violations of rights in these districts and to defend the grievances of the citizens experienced serious difficulties. In addition, it can be said that after the appointment of a trustee to the HDP Mardin Metropolitan Municipality, especially those who serve as corporate lawyers for the municipality, faced serious pressures, investigations and detentions after this appointment.

It is also necessary to make a general assessment of the demographic composition of the lawyers who are advocating for human rights in Mardin. Similar to Mersin, the fact that the average age of lawyers is quite young and the number of female lawyers is higher compared to Diyarbakır and Adana seem to be remarkable factors. In addition, while the majority of the lawyers working in Mersin and Adana are the children of immigrated families who settled in the city, the lawyers working in Diyarbakır, especially in Mardin and Urfa are born in these cities. After graduating from the law faculty, most of lawyers return to their hometowns and carry out their professions.

|   |    |
|---|----|
| 1.Lawyers who get into showing identity card trouble in court houses and prisons                  | 50 |
| 2. Lawyers who thought that they are recorded illegally   | 50 |
| 3.Lawyers who thought that they subject to illegal wiretapping                                    | 50 |
| 4.Lawyers who are subject to surveillance of social media accounts                                | 50 |
| 5.Lawyers who complaints to Bar Association by prosecutor   | 2  |
| 6.Lawyers who are subjected to police harrasment and violance during clients interviews           | 27 |
| 7.Lawyers who get into trouble with prison administration and prosecutor office                   | 32 |
| 8.Lawyers who are subjected to car, Office and home searc   | 10 |
| 9 Lawyer who ared subjected to law suited   | 7  |
| 10 Lawyers who are arested and dettained  | 4  |
| 11.Lawyers whose sentence is executed   | 2  |
| 12.Lawyers who are subjected to more than one item (5., 6., 7., 8., 9., 10., 11.) mentioned above | 11 |

It is still possible to see the traces of the trauma resulted from the urban blockade in the region in 2015. Hundreds of civilians lost their life, especially during the months-long blockade in many districts of Mardin. It has been determined that many grievances have been encountered such as long-term curfews, violation of the right to life, right to health, prevention of education, failure to meet food and basic needs, and right to housing. After the long-term bombings, the residences where many citizens lived became unusable. Mass migrations took place from cities and districts exposed to these practices to metropolitan cities and western provinces.

It can be said that all these violations of basic human rights and freedoms have undoubtedly put more burden on lawyers after the chronic violations of rights in the region. Another point that should be emphasized is that most of the lawyers lost their relatives. This situation also results in a secondary trauma. As a matter of fact, because of this, Mardin was the province where we received the most negative feedback from the lawyers. The uneasy state of those who accepted the interview and the reactions they showed while describing what they experienced in the in-depth interviews also indicate that the traces of the severe trauma experienced still continue.

Mardin is not an exception, neither with reference to answers given to questions nor lawyers feel themselves as safe while carrying out their profession. All of the lawyers think that they have been tagged, their phones are wiretapped, and their social media accounts are being surveilled. Here, we observed that the problems experienced especially during interrogation and client interviews in prisons became more chronic when compared to other provinces. Since there are no heavy penal courts in the districts, the

most of detainees are tried in provinces such as Mardin and Diyarbakır and kept in prisons in these provinces creates secondary pressure on the lawyers working in the districts. Constantly going to these provinces for lawsuits and client meetings puts a serious financial pressure on lawyers. It can be said that the courthouses in the districts are usually located inside the district governor's office, which increases the situations such as showing identity cards, being subjected to body searches.

Although the number of lawyers detained, arrested or prosecuted in Mardin is low compared to Mersin and Diyarbakır, lawyers working especially in districts have frequent struggle with local public administrators in their daily work routine; therefore, it can be said that the rate of physical and psychological violence is higher in Mardin.