

The Rule of Law in Turkey:

Legal Practice and Bar Associations – Where to now?

PEN Norway's Turkey Indictment Project

Dr. Kasim Akbaş

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About the author:

Kasım Akbaş graduated from Ankara University's Faculty of Law in 2001. He pursued his Masters and Doctoral studies at Anadolu University. He is the author of two books and well as various articles and book chapters in the fields of Sociology and Philosophy of Law, Theory of State and the Law and Human Rights. He continues to work in the arenas of research and publication. Due to him being one of the Academics for Peace who signed the letter calling for peace in Turkey in 2016 he was ousted from his university post under the State of Emergency Decree number 686. Kasım Akbaş is the recipient of prizes from organisations both within Turkey and internationally.

1: The Starting Point

As of the end of 2019, there were a total of 127,691 lawyers in Turkey, all of whom witnessed fundamental changes being made to their profession by the government. Turkey has the third highest number of lawyers in Europe, after Spain and Germany. France, which ranks fourth, lags far behind with almost half this figure.

Up until the recent political “antagonism”, this excessive number of lawyers was one of the most common complaints of those in the profession. The situation was exacerbated by the proliferation of legal faculties opened by various ruling parties for populist reasons, as well as the ease of entry into the legal profession, in many cases only a formality that could be attained after just a one-year internship. Consequently, it was criticised for lowering standards and also earnings.¹

While Turkey is third in Europe for the number of lawyers, it ranks eighth in terms of the number of lawyers per capita (at a ratio of 1:642). In fact, when this is compared to the number of lawyers in countries with relatively smaller populations, like Estonia, Norway and Luxembourg, this seems to be fairly acceptable.² Thus, when considered comparatively, the complaints of Turkish lawyers in this regard seem overstated.

However, looked at from an historical perspective, it should be noted that the legal profession and bar associations have functions that surpass those of other countries due to the socio-political realities of Turkey.

¹ There are hundreds of complaints expressing this sentiment, but a good representative example can be found in an article by former Ankara Bar Association President, the lawyer Atilâ Sav, called “The Profession of Defence is a Public Service”, Ankara Bar Association Journal, 2010/1:

² For European countries statistics see https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statistics/EN_STAT_-2018_Number-of-lawyers-in-European-countries.pdf, Date of Viewing: 07/08/2020. For Turkish statistics, see <https://www.barobirlik.org.tr/Haberler/2019-avukat-sayilari-31122019-81078> Date of Viewing: 07/08/2020. Unless otherwise specified, the other statistics have been produced by the author based on the data included here.

2: The Legal Status of Lawyers in Turkey

In the Turkish legal system, the status of lawyers and bar associations has some unique characteristics compared to other countries. In Turkey, the profession is described in law as a “public service and a freelance profession”, a fact that has, from time to time, given rise to various claims and disputes.

On one side of the argument, some claim that to be a lawyer is to have a “freelance profession”, that no “public power” is used during the execution of the job and that the relationship between the representative and the represented is a proxy one by nature.

The flip side of the argument considers lawyers to be “public officials” and is based on the premise of Article 128 of the Constitution, which describes public service as carried out by “public servants and other public officials”. In fact, there are other regulations that reinforce these arguments. For example, according to Article 6 of the Turkish Criminal Law: “In the practice of criminal law, “judiciary” refers to the high courts, judicial, administrative and military courts with their members and judges, Public Prosecutors and lawyers”. Article 57 of the Legal Practitioners Act, headed “Crimes committed against Lawyers”, contains the ruling that “Crimes committed against lawyers in the course of their duty or due to a duty they are carrying out shall be punishable according to the same provisions on such crimes committed against judges.”

Looking at these provisions, we can see that lawmakers have wanted to fortify the legal status of lawyers by rendering it close to public officers, but on the other hand – when we consider that a public officer cannot be independent and objective in the face of the government – they have also taken into account concerns over professional independence and thus determined it to be a “freelance” activity. It is not difficult to guess that there are certain social and historical developments behind the accommodation of these two, seemingly contradictory, approaches.

As it emerged along with the modernisation of Turkey, the legal profession also became part of the secular yet state-centred modernisation process. The secularisation, modernisation and westernisation of legal and judicial institutions can be seen as the hallmark of the Turkish Revolution, because the weakness of any social strata that might have formed its platforms or agendas meant that the Turkish Revolution principally emerged as a renewal of institutions within a legal framework. The founder of the republic, Mustafa Kemal Atatürk, expressed this at the opening of the Ankara Law School (today's Ankara University Faculty of Law): "The Turkish revolution, which has been in progress for many years, has harnessed its existence and ideas to the expedience of determining and validating new legal provisions that are the source of public life". His speech at the inauguration was concluded with the words: "I am extremely pleased to say that I have never before felt the joy I feel now in opening this institution, which will become a force behind the Republic".

3: The Legal Profession in Turkey: A Short Framework of Socio-Historical Developments

While 1938 marks a shift from the first to the second major period of developments in the legal profession in Turkey, the post-1938 period can also be divided up into periods, which are no doubt closely related to the political, social and economic developments in the country. The period after 1938 was one in which wars on the global stage were accompanied by the beginnings of international institutions, with developments towards both fascism and democracy. From Turkey's perspective, this period was marked by moving to a multi-party electoral political system and also the introduction of a new constitution following the military coup of 27th May 1960. The characterisation of the legal profession as a "freelance profession in the nature of public service", as it is referred to so often today, emerged in this period. In an elective but non-internalised, democratic setting, the concept of the legal profession as an extension of the central government – itself greatly influenced by the

authoritarian, fascist and corporatist trends of the time – sat comfortably next to the idea of an “independent profession”.

In this framework, lawyers and their organisations constituted a highly-educated segment of society that had been given the duty of representing, not only republican values, but also defending the idea of non-individualistic (or classless) economic and political development. Therefore, the legal profession in Turkey developed along a freelance trajectory that frequently intersected with the statist ideology, rather than the lawyer typology otherwise seen following liberal bourgeois revolutions.

Leaving aside the controversial status of the 1961 Constitution in Turkey’s political and legal history, we can say that it marks a shift to a political order in which the founding ideology of the state blended with a limited social state that partially adhered to liberal, individualistic values. The new constitution’s liberal elements concerning rights and freedoms, and its more social approach towards worker unions, strikes, etc, showed, not a departure from the corporatism explained above, but on the contrary, a step closer to a substrata of social solidarity. Thus, the legal profession entered a period that saw it undertake the task of defending basic rights, freedoms and social rights. It became increasingly “politicized”, yet did not stray from loyalty to the state’s founding ideology. As the organisations upon which the profession was founded, Bar associations as a whole were the defenders of this constitutional structure and even had public authority within it.³

As part of the regime created by the 1961 Constitution, a supreme central bar association, the Union of Turkish Bar Associations (TBB), was established through the new Legal Practitioners Act in 1969 (which is still in force despite many changes). The establishment of the TBB and the transfer of certain authorities that used to belong to the Ministry of Justice (while maintaining tutelage) to the supreme professional body meant two things: firstly, the expansion of the profession’s independence and its ability to respond to political and social issues; secondly, it

³ See İdil Elveriş *Bar Associations and Politics* from Özman: *The Bar Associations and Government Agencies of Turkey*, 2014, İstanbul: İstanbul Bilgi Üniversitesi Yayınları, p. 50

meant an attempt to erode the impact of local bar associations,⁴ because powerful bar associations with a large membership – such as the Istanbul Bar – started defending rights and freedoms, the social state and democracy more fiercely under the relatively more “libertarian” atmosphere created by the 1961 Constitution. Furthermore, the opportunity emerged to join in larger platforms together with other rights and labour organisations that emerged in the period. However, the establishment of the TBB meant “centralisation” for the bars, which brought a host of difficulties in its wake.

It is not surprising that lawyers later increased their independence both in terms of economic status and social conscience. While they had no particular conflict with the basic values of the state, lawyers and bar associations had attained a position from which they could oppose certain choices made by the Ministry of Justice and other government bureaucracies. On the other hand, they also lost a degree of uniformity amongst their ranks.

As part of the process that emerged with the 1982 Constitution, it can be seen that the central government abruptly abandoned the concept of separation of powers that had made relative progress in the previous period. The most well-known examples are the erosion of judicial and legislative powers, while increasing the enforcement authority given to the president as head of the executive. When legislation was reduced to the agency of a parliament with reduced functions and powers, elected by an anti-democratic election and political parties law, those working in the judicial system lost their independence and became government officials.

The 1982 Constitution also meant a loss or erosion of autonomy in many institutions. The autonomy of universities and institutions like the public broadcaster TRT was either completely lost or eroded to the point of being meaningless. The same is true for the bars and the TBB. The tutelage of the Ministry of Justice, or in other words the executive, has increased. Professional associations were placed under state

⁴ Elveriş, *op.cit.*, p 54.

administrative and financial supervision, prohibited from cooperating with other unions and associations, and TBB administrators even had to seek permission from the Ministry of Justice to leave the country.⁵ In other words, the separation of powers was eroded both horizontally and vertically (decentralised establishments). The TBB only regained many of its old powers and relative independence after the amendment of the Legal Practitioners Act in 2001.

The situation facing us today can only be understood against this historical background: in other words, the bar as an institution of the “republic”, and its use of authority in the public sphere, became the subject of debate in terms of both its general values and its position as a decentralized institution. When considered from this perspective, it is apparent that the discussion about bar associations and/or ensuring democratic representation, which was started by the ruling party in the name of democracy, is not actually a move towards “democratisation” but, on the contrary, an anti-democratic move. Aside from a few different historical developments, the history of Turkey’s political and constitutional shifts is the history of the centralized state and the consolidation of the power of the executive within it. What we are faced with today is not the issue of bars “practicing politics” or the “democratic definition of governance”, but a political ruler that does not want to share public power with any constitutional force, including the legislative and executive organs of the state, or any autonomous establishment.

4: Bar Associations in Turkey: Professional Associations Serving as Public Bodies with Public Legal Entity

Lawyers in Turkey are required to register with bar associations. According to Article 66 of the Legal Practitioners Act No.1136: “Every lawyer is required to be registered

⁵ Elveriş, op.cit., p 52.

with the bar association within the jurisdiction in which they will be practicing law”. Since the regulation that is the subject of so many current discussions is related to a sentence added to this article, we will return to it below in the section headed “Recent Developments”; but for now, let it suffice to say that lawyers that are substantively and continually assigned to public bodies, public organisations or state economic enterprises (referred to hereafter as “public lawyers”) are not obligated to register with a bar association, and registering with a bar is left entirely to their own discretion (as per Supplementary Article 1 of the Legal Practitioners Act No.1136).⁶

According to Article 76 of the Legal Practitioners Act, “Bar associations are professional organisations of a public nature, which operate as legal entities and in line with democratic principles in order to nurture the profession, ensure honesty and reliability among the members and practice owners of the profession, defend and preserve professional order, morals, reputability, the rule of law and human rights and to meet the needs of lawyers. Also, according to Article 77: “Bar Associations are established in all provincial centres that have at least thirty lawyers in them”. Since the current disputed regulation also made an addition to this article, we will come back to this topic.

The Law regulates the Union of Turkish Bar Associations as follows:

“The establishment and characteristics of the Union:

Article 109 –

The Union of Turkish Bar Associations is an organisation that is formed with the participation of all bar associations.

The association is a professional organisation with the nature of a public body and with a legal entity.

The headquarters of the union are in Ankara.”

⁶ As there is no separate registry system for public lawyers, all the figures quoted in this article refer to lawyers registered with bar associations.

Up until the latest changes, the TBB General Assembly, which has the duty and authority to choose members of its executive, disciplinary and supervisory boards and also elect the Union president, was established by secret ballots in which each bar selected two delegates from among members with at least 10 years' experience in the profession. Furthermore, bar association presidents currently in post and lawyers that have served or are serving as presidents of the TBB are automatic members of the General Assembly; they also have the right to participate in the vote, as well as to be elected. Up until the latest changes, bar associations with over one hundred lawyers would each select one extra delegate for every three hundred members over the first hundred.

Delegates for bar association president, the executive, disciplinary and supervisory boards and the TBB General Assembly are chosen in ballots held every two years. The TBB president, executive, discipline and supervisory boards are elected for a four-year term. Consequently, each TBB president goes through a general assembly called a "financial general assembly without elections" during their presidency. The TBB General Assembly holds a general meeting every two years at the time and place assigned by the previous general assembly meeting. However, General Assembly meetings that include elections are held in Ankara. Also, an extraordinary meeting of the General Assembly can be called by the TBB executive board or– up until the latest changes – by the written request of the executive boards of at least 10 bars.

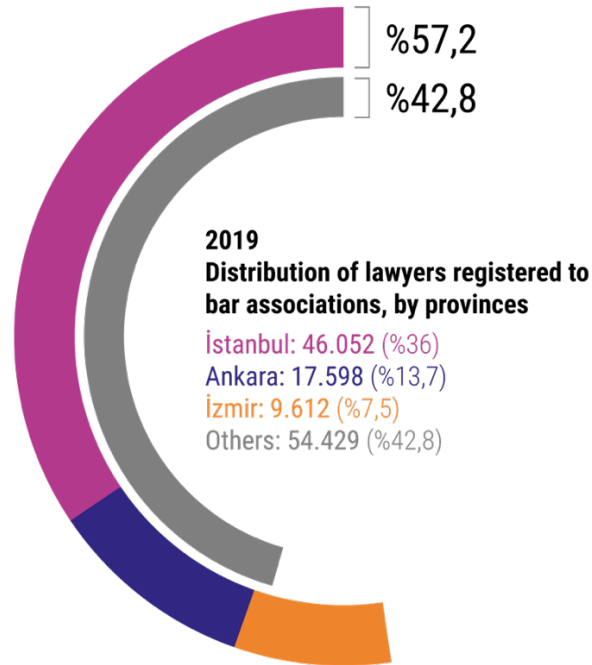
The most important feature of the legal status of bar associations in Turkey is that they are set up as "professional organisations with a public nature". This issue is outlined in article 76 of the Legal Practitioners Act quoted above, which states: "Bar Associations... are professional organisations of a public nature, which operate as legal entities and in line with democratic principles". Article 135 of the Constitution states that: "Professional organisations and supreme bodies of a public nature; ... are public legal entities". In other words, the bar associations and their supreme body, the TBB, are not powerful yet ordinary non-governmental organisations, but rather an integral part of the state public legal entity; bar associations are among the establishments that use state sovereignty on behalf of the people.

If we were to express this in legal terms, the three functions of the state are legislative, executive and judicial. Upon the execution of these functions the state's sovereignty helps to shape these powers of legislation, execution and justice.

These authorities and powers are used by the legislative organ (parliament), the judicial organ (courts) and the executive organ (government and administration). The administration, which is an element of state sovereignty, is organized into central management and decentralized powers. In terms of decentralisation, the first thing that comes to mind is the location aspect of decentralisation, in other words, local governance. There are three types of local administration in Turkish law: provincial, district and village administrations. Service decentralisation bodies are another form of decentralisation. These have been created based on the idea that leaving management of matters that require technical knowledge and expertise up to the centralized governance could be problematic. Examples of these locally-assigned authorities include the Directorate General of Foundations, the PTT (Turkish Post Service) Directorate General, the Machine and Chemical Industry Agency, the Turkish Employment Agency, TÜBİTAK (Scientific and Technological Research Council of Turkey), universities, TRT (Turkish Radio and Television), the Atatürk High Council of Culture, Language and History etc.

Agencies with governance within delineated local areas have the status of a public legal entity; they are autonomous, have their own budgets and are subject to the tutelage of the central administration. Professional organisations with public agency, including bar associations, are decentralized too, in this sense. Thus, the bar associations use a portion of state sovereignty on behalf of the people – or, to clarify, use the authority to perform public service given to them by the constitution and the law.⁷

⁷ See Tora Pekin and Kasım Akbaş, "Autonomous bar associations as public power", <https://birartibir.org/siyaset/739-kamusal-guc-olarak-ozerk-barolar>, View date: 07/08/2020.



There are 80 bar associations in Turkey that are within this legal framework today. This means that today there is a bar association in every province (excluding Bayburt). The bar associations of the three largest cities in the country (Istanbul-Ankara-Izmir) are also the most heavily populated in terms of the number of lawyers. With its number of members approaching 50,000, the Istanbul Bar Association is not only Turkey's most populous bar association, but among the most populous bar associations in the world.⁸ The Ankara Bar Association has 20,000 members and the Izmir Bar Association has 10,000. The number of lawyers in these three bar associations makes up about 75% of the lawyers registered to bar associations across the country.

The general assembly elections for the more populous bar associations are conducted using a type of open list system. This means that the presidential candidates comprise one list and the candidates for other boards are on a separate

⁸ In 2010, the Istanbul Bar shared an article declaring it was "the world's biggest bar": <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=5190>, View date: 07/08/2020

list. In the general assembly, the lawyers mark these lists to determine their candidates for president, the boards and the supreme body. But of course, there are “groups”⁹ working inside the bar that guide their followers by preparing “key lists”. In this manner, the most preferred candidate for president is elected and the bar administration is formed from those that receive the most votes. According to this method, when two groups participate in the election, theoretically a group with 51% support could persuade its supporters to vote for their entire “key list” and thus take over the management entirely. In reality, as there are more groups than this, a group with around 30% of support is usually in a position to determine the president and administration. Also, since not all lawyers vote in the elections, it can even be claimed that the support for the bar management comes to no more than around 25%.

So while bar associations are on one hand an extension of public power, on the other hand they are able to take an oppositional stance contrary to the general political trend in Turkey due to both the power of the profession’s tradition and the

⁹ These groups can be classified as socio-political, ideological and/or groupings with common professional concerns. In Istanbul, Ankara and Izmir, a group of lawyers called *Çağdaş* (Modern) (although the name has changed a few times) have been in control for a long time. Within the historical framework explained above, this group arose in the political atmosphere of the 60s and 70s on a platform of secularism, social justice and rights-freedoms, but disintegrated under the impact of the political agendas of the 80s, 90s and 2000s and/or continued its existence under different names. For example, the *Çağdaş Avukatlar Grubu* (ÇAG) (Modern Lawyers Group) in the Istanbul Bar, which is considered to be fairly representative of the point in question, has been in continuous control since lawyers first began to form groupings. However, the political atmosphere of the 90s led to divisions based on different agendas. In the end, a group called the *Önce İlke Çağdaş Avukatlar Group* (ÖİÇAG) (Principles First Modern Lawyers Group), which emerged from the *Çağdaş* group, remained in control. In the 2018 elections, this later group gave birth to another group from within its own ranks, called *Önce İlke-ÇAG Yükseliş Hareketi* (Principles First Modern Lawyers Group Advance Movement). Likewise, later groups the *Avukat Hakları* and *Avukat Hareketi* (Lawyers Rights and Lawyers Movement) were made up of former members of ÇAG, who later formed ÖİÇAG. For a detailed analysis of the Istanbul Bar groups specific to the 2018 elections, see Seda Kalem and İdil Elveriş, “Siyaset Yapmak ya da Yapmamak: 2018 İstanbul Barosu Seçimlerine Bir Bakış”, Ankara Barosu Dergisi, 2018/4: 161-208. In the Ankara Bar, a group called *Demokratik Sol Avukatlar* (DSA) (Democratic Left Lawyers) formed after splitting from ÇAG in the political atmosphere of the 90s. The DSA determines the candidate for the president with a pre-ballot among its own members. Support for the DSA in the Ankara bar is so strong that the candidate chosen in this pre-ballot will no doubt become the new president of the bar. At this point, let’s remember that the existing TBB president, Metin Feyzioğlu, began in the DSA, became the Ankara Bar president and later the TBB president.

circumstances of the bar elections up to now. At a time when politics saw clashes on sensitive issues concerning secularism, the conflicts between the bar associations and the ruling party intensified, particularly after the AKP came to power, making their oppositional position ever clearer.

This is why the AKP government sees the bars as a threat. For one, they cannot tolerate a structure within the existing state apparatus that has the capacity to use state power but is not aligned with them. Secondly, they can see that the bar associations are one of the rare organized structures capable of raising their voice against the authoritarian practices that have visibly eroded rights in recent times. In fact, the government knows that it is highly unlikely that a circle close to their own socio-political base will ever be dominant in the TBB. Consequently, it is a known fact that from its first years in office, the government has had strategies ready for use in curbing the influence of the bars. Every time an argument arises that intensifies the oppositional stance of the bars, a new change to the Legal Practitioners Act comes into play.

5: Recent Developments

It has never been a secret that the AKP government wanted to make an amendment to the Legal Practitioners Act that would change the composition of bar associations. But the agreement the government appeared to reach with current TBB President Metin Feyzioğlu – the substance of which no-one can be completely sure – enabled the new legislation to be postponed a little longer. Metin Feyzioğlu's line, which gradually got closer to that of the AKP government and finally even matched it, made the bar associations very uncomfortable.

Subsequently, for over a year, there were a variety of attempts made to end Feyzioğlu's presidency before his term was completed. As a result of these attempts, the executive boards of twelve bar associations, including those of Istanbul, Ankara and Izmir, applied to the TBB executive in writing, as per Article 115 of the Legal

Practitioners Act, and demanded an extraordinary general assembly meeting be held for a new election to take place. The TBB management claimed on 08/11/2019 – before the change – that despite there being no stipulation and/or impediment in the law on this subject, an election could not be held in an extraordinary general assembly meeting, and rejected the request.¹⁰ One delegate applied to the administrative court to stop the vote and cancel the TBB Executive Board decision. The Ankara 5th Administrative Court ruled to halt the TBB decision on 10/03/2020; thus forging the way for an extraordinary general assembly meeting with an election.¹¹ The TBB appealed the stay of execution ruling at the Regional Administrative Court. In response to this, the Ankara Regional Administrative Court 12th Administrative Judicial Chamber removed the stay of execution on 23/04/2020, stopping the election once again.¹²

The holding of an extraordinary general assembly had been decisively subverted, meaning that the continued presidency of Metin Feyzioğlu was only rendered possible by a compulsory court order. The TBB administration was taken to court by the country's leading bar associations – most likely representing over 80% of lawyers in the country. It was all but certain that the delegates elected to the bar association in 2020 would not be supporting Metin Feyzioğlu and his administration at the end of year TBB General Assembly meeting. Therefore, from the perspective of Metin Feyzioğlu and the AKP government he had been acting in unison with, it was only a matter of time before he would lose the TBB presidency and the other bar associations would find a candidate they could all agree on. If no intervention was made, by the end of 2020 a new TBB president would be chosen by “opposition” bar associations.

¹⁰ For the relevant TBB Board of Directors ruling, see <https://www.barobirlik.org.tr/Haberler/turkiye-barolar-birligi-nin-olaganustu-genel-kurula-davet-edilmesine-dair-taleplere-iliskin-yonetim-80939>, View date: 07/08/2020.

¹¹ For the relevant news report, see <https://www.cumhuriyet.com.tr/haber/mahkeme-karar-verdi-tbb-olaganustu-genel-kurula-gidecek-1729846>, View date: 07/08/2020.

¹² <https://www.gazeteduvar.com.tr/gundem/2020/04/23/tbbde-genel-kurul-yapilmasina-dair-mahkeme-karari-bozuldu/>, View date: 07/08/2020.

The day after the Regional Administrative Court gave its ruling, the following statement was issued before Friday prayers in a sermon by the Director of Religious Affairs, Ali Erbaş (whose sphere of influence and share of the budget keeps increasing – a sensitive issue for secularists): “Islam considers adultery the greatest of sins. It condemns “Lotism”,¹³ homosexuality. What is the wisdom of this? The wisdom is that it brings disease and rots a generation. Every year, thousands of people are exposed to the HIV virus caused by the biggest sin, adultery. In Islamic literature, this means people living in sin. Come let’s fight to protect people from this evil together”. In response to this, the Ankara Bar released a written statement saying, “We watched with astonishment and concern the speech of Ali Erbaş, the Director of Religious Affairs, in which he used a speech aimed at the masses to scorn a group of human beings with intense hatred. Our astonishment is down to this individual who, as though emerging from an ancient time that pre-dates civilisation, sits at the head of a government agency, basing his discourse on values that are considered holy with the bloodthirsty audacity to incite hatred and animosity among the people”. Immediately after this, those government circles launched a campaign targetting the Ankara Bar Association administration.¹⁴ This was followed by public prosecutors launching an investigation into the Ankara Bar Association administration. Thinking it would find support for its own cause in this “sensitive” discussion, the government then brought the Legal Practitioners Act, long waiting in the wings, back onto the agenda.

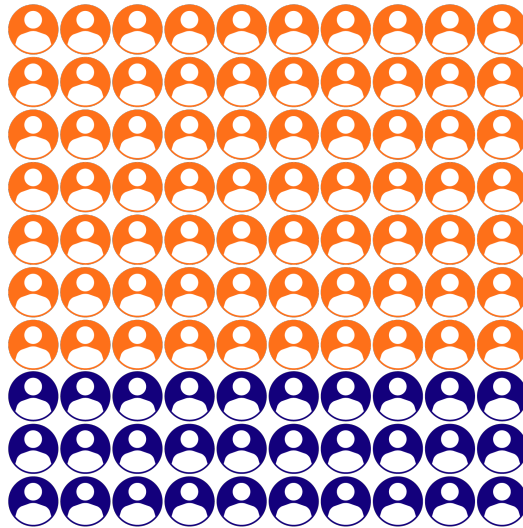
In fact, the changes expressed by the government did not refer directly to the statement made by the Ankara Bar Association. But with one of the most powerful bar associations opposing the existing TBB falling out of public favour, the case was

¹³ In the religion of Islam, the concept of Lot goes back 4,000 years; it is believed that this tribe normalised behaviour forbidden in the Qur’an, such as homosexual relations, incest, rape and prostitution and therefore suffered the wrath of Allah. The myth is the same as that of Sodom in the Torah. In daily life, behaviour regarded as unacceptable to Islamic morals about sexuality, especially homosexuality, is often discussed with references to the tribe of Lot.

¹⁴ The TBB President Metin Feyzioğlu also took the side of the Department of Religious Affairs against the statement by the Ankara Bar. Feyzioğlu stated that he considered the Ankara Bar’s statement to be “irresponsible”, and “it is not possible to approve of this”. See <https://www.cumhuriyet.com.tr/haber/tbb-baskani-metin-feyzioglundan-diyamet-aciklamasi-1735645>, View Date: 07/08/2020.

made for an urgent amendment to the law before the approaching TBB election, using a series of arguments that appeared relatively legitimate, such as the idea that the bar administrations did not represent the values of the nation, that their administration was not democratically elected, that the delegate structure was wrong, the open list method was anti-democratic and that “small” bar associations were not represented in the TBB General Assembly.

If there are more than
5000 lawyers in a province



2000 Lawyers can apply to
form a new bar association
in a province

The government’s main concern was to achieve changes to the delegate composition that would make it possible for Metin Feyzioğlu’s presidency to continue in the 2020 TBB General Assembly. Also, in a direct shot at the bars of Istanbul, Ankara and İzmir, they aimed to instigate a crisis of legitimacy for the existing bar administrations by making it possible to establish more than one bar association in the same city.

In this framework, there were two areas of regulation that stood out: the first was clearing the way for cities with more than 5,000 lawyers to be able to establish a new bar by gathering together a minimum of 2,000 lawyers. The second was to reduce the number of delegates from Istanbul, Ankara and Izmir, which had a large majority in the TBB General Assembly, thereby increasing the representation of relatively small bar associations. Both legislative matters were presented by the government and its circles as moves toward “democratisation” and “increasing/fortifying democratic representation”.

The bar associations were against both regulations. In fact, while the number of bar associations backing the call for an extraordinary meeting of the TBB General Assembly remained at twelve, the presidents of over sixty bar associations expressed their opposition to the legislation. Furthermore, they started a march from their own cities to Ankara, where the proposed discussions were due to take place at the Turkish Grand National Assembly (TBMM). Large numbers of bar association presidents marched to the capital, where they met with a harsh response from the government. Firstly, the bar association presidents were stopped at the entrance to Ankara and barred from going any further. Next, they were prohibited from entering the TBMM. Only representations to the Commission and discussions at the general assembly were allowed, but the bar presidents would not agree to this. Large numbers of bar presidents spent days and nights in the streets wearing their official robes, keeping vigil at a location close to the TBMM. From time to time, there were even police interventions. Despite this, the law, which also had the support of Metin Feyzioğlu, was swiftly accepted by Parliament and ratified by the President. It soon came into effect after publication in the Official Gazette.

Now let's take a closer look at which changes have taken place through this law and whether or not it strengthened democratic representation as originally claimed. First of all, with regard to allowing more than one bar association to be established in a city, the following addition was made to Article 77: "In provinces where there are more than 5,000 lawyers, a bar association can be established by a minimum of 2,000 lawyers. These calculations will be based on the number of lawyers registered to the bar, lawyers serving in government agencies and institutions and lawyers in state economic enterprises". There are currently three bar associations with more than 5,000 members; these are the Istanbul, Ankara and Izmir bar associations. The Antalya Bar Association has almost 5,000 members. However, by adding the stipulation that public lawyers, who are not required to register with the bar, will also be counted, Antalya and very soon Bursa will also be considered to have more than 5,000 lawyers. Of course the issue is not just having over 5,000 lawyers, there must also be 2,000 lawyers willing to establish a new bar. It appears that public lawyers

will be pressurised to register with the new bars to meet the 2,000 figure. In fact, at the time of writing, there are still no newly-established bars, despite mentions of attempts to establish second bars in Istanbul and Ankara.

Looked at in this way, the legislation, which the government presented as giving the right to “choose” a bar association, can be seen as a tool to encourage discourses that question the legitimacy of the existing bars by compelling public lawyers, over whom the government has authority, to join as members. Therefore, it is not democratic freedom that is on the agenda, but an attempt to create an anti-democratic obligation.

It can be foreseen that another type of obligation to join the newly established bars may arise within the Turkish judicial system, whose objectivity and independence is already in question. The rumour that courts will make their decisions based on which bar association the lawyers belong to poses a threat that could completely eliminate the principle of judicial independence and impartiality that has already been seriously undermined. This is the biggest risk both in terms of the profession and the right to a fair trial.

We already mentioned that the second area of regulation concerns the composition of delegates that elect the administration of the TBB. The amendment on this subject was made to Article 114 of the Legal Practitioners Act. According to this, the TBB General Assembly is to be established by secret ballot, with each bar association electing three delegates from members with at least ten years’ seniority. This marks a shift from the system mentioned previously, in which each bar association directly elected two delegates. In effect, this increases the delegates of relatively small bars by one. Also, one delegate for each 5,000 members is chosen by the Bar general assemblies. Just to recall, in the past, there had been one delegate elected for every three hundred members over one hundred. This effectively reduces the number of delegates for relatively large bar associations. For example, if we are talking about a bar of 4,900 members, in the old system they would have at least three delegates, as two delegates and the chairman were granted automatically. Since one delegate

would be appointed for each 300 members past the initial 100, this hypothetical bar would gain sixteen more delegates. Thus, a bar association of 4,900 members would send 19 delegates to the TBB General Assembly. Under the new regulation, this same bar would have a total of four direct delegates made up of three delegates and a president. There is no question of additional delegates as they can only be granted for each 5,000 members. Simply put, a bar with 4,900 members would be represented by just four delegates under the new regulations. How the change in the delegate system will affect the bar associations is presented as an additional table, but it would be pertinent to provide some examples here.¹⁵

According to the old regulation, the following bars would have been represented by the following number of delegates (including the president) in the TBB General Assembly;

- The 42-member Tunceli Bar, 3 members,
- The 48-member Ardahan Bar, 3 members,
- The 89-member Gümüşhane Bar, 3 members,
- The 91-member Kilis Bar, 3 members,
- The 46,052-member Istanbul Bar, 156 members,
- The 17,598-member Ankara Bar, 61 members,
- The 9,612-member Izmir Bar, 34 members,
- The 4,757-member Antalya Bar, 18 members.

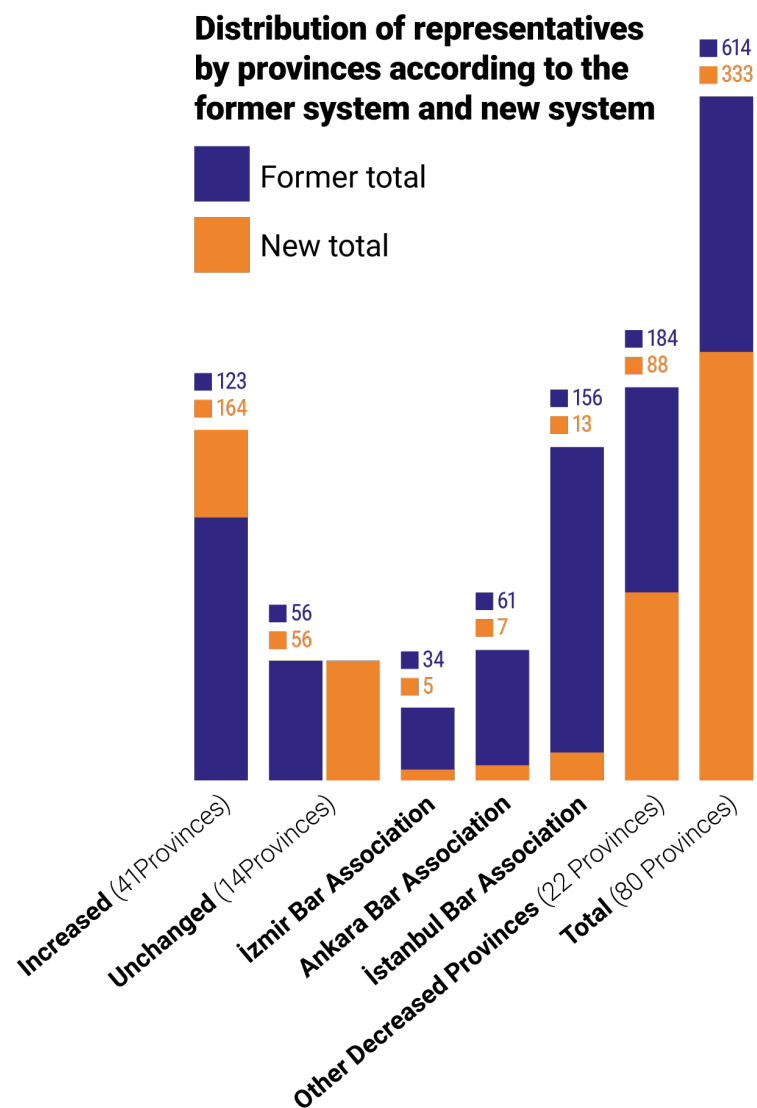
Under the new regulations, the same bars will be represented by the following number of delegates in the TBB General Assembly (including the president)

- The 42-member Tunceli Bar, 4 members,
- The 48-member Ardahan Bar, 4 members,
- The 89-member Gümüşhane Bar, 4 members,
- The 91-member Kilis Bar, 4 members,
- The 46,052-member Istanbul Bar, (4+9) 13 members,
- The 17,598-member Ankara Bar, (4+3) 7 members,
- The 9612-member Izmir Bar, (4+1) 5 members,
- The 4757-member Antalya Bar, 4 members.

¹⁵ See Kemal Göktaş, “The AKP-MHP’s proposal for changes in bar associations: Coup-like and insidious”, <http://www.diken.com.tr/akp-mhpnin-barolarda-degisiklik-teklifi-darbeci-ve-sinsi/>, View date: 07/08/2020. The reason why the figures here differ from Göktaş’s figures is that the statistics in this article are based on the number of lawyers as of 31/12/2019

According to the old regulations, the Tunceli Bar would have a representation ratio of 1:14. In other words, the Tunceli Bar Association members have one TBB General Assembly member per 14 lawyers. The representation ratio of the Ardahan Bar is 1:16, the Gümüşhane Bar is 1:29.66 and the Kilis Bar 1:30.33. Similarly, the representation ratio for the Istanbul Bar is 1:295.2; so the Istanbul Bar members have one TBB General Assembly member per 295.2 lawyers. The representation ratio for the Ankara Bar is 1:288.4, for the Izmir Bar it is 1:282.7, and for the Antalya Bar it is 1:264.2.

Under the new regulations, the representation ratio for Tunceli increases to 1:10.5. The Ardahan Bar is represented at a ratio of 1:12, the Gümüşhane Bar at 1:22.25 and the Kilis Bar at 1:22.75. The Istanbul Bar's representation ratio falls to 1:3,542. This ratio becomes 1:2,514 for the Ankara Bar, 1:1,922 for the Izmir Bar, and 1:1,189 for the Antalya Bar. So under the new regulation, the chances of a lawyer in Istanbul or Ankara having an impact on the TBB are



reduced 10-fold in comparison to the former system, which was also unjust.

To summarize, the amendment the government has made in the name of democratic representation actually further downgrades representative justice. As well as this, to eliminate any danger of an “elective general assembly” taking place, the same legislation states that, “an extraordinary meeting of the General Assembly can be called directly by the Union Executive Board or upon the written request of the executive boards of at least twenty-five bars, on the condition the meeting is limited to the range of duties specified in Article 117. However, no election shall be held in the meeting”. In other words, the government does not want the bars, which represent 80% or possibly even more of the country’s lawyers, to congregate and possibly change the TBB administration at an “inopportune time”. It not only imposes the condition of 25 bars in place of 10 and reiterates the limitation on the range of duties, but also states that an election cannot be held in an extraordinary meeting.

Further to this point, the procedure with which the new regulations were established also needs to be examined. Discussions about the new proposed regulations began at the end of April 2020. The proposal was presented to the TBMM Directorate on 30th June. On 6th July, the Justice Commission meetings were completed and on July 11, it was accepted at the TBMM General Assembly. On 15th July 2020, the proposal was published in the Official Gazette, thereby coming into force as legislation. This change to the law, about which no information was provided until it was presented to the TBMM Directorate, was implemented within 15 days.

Another procedural concern is the manner used to bring in this legislation. A legislative technique called an “omnibus bill” has been used in Turkey for a long time. Many regulations concerning different fields are legislated on the same bill and with a confusing style of phrasing without a clear understanding of the regulation it would replace. Here’s an example: the regulation that created a significant change in delegation structure was executed as follows:

“ARTICLE 18 – The “two each” phrase in clause two of Article 114 under Law 1136 has been changed to “three each” and clause three has been changed as below.”

In order to keep track of what this regulation means, one must first find the phrase “two each” in article 114 of Law 1136, change it to “three each” and then assess what the repercussions might be. This makes it very difficult for the public to follow changes in the law.

Consequently, we are faced with an amendment that falls very far from democratic representation in terms of both procedure and content.

6: The Finish Line

With this amendment, another temporary article was added to the Legal Practitioners Act No.1136: “Regardless of terms in office, all bar associations must hold elections for their presidency and members of the executive, disciplinary and supervisory boards and for delegates to the TBB in the first week of October 2020; elections for president of the TBB and for members of the executive, disciplinary and supervisory boards are to be held in December 2020.” In other words, the administrators of all bars in Turkey will change in October 2020. These administrators and delegates will elect the TBB administration two months later in December.

We began with some observations about a country that has one of the highest numbers of lawyers and most powerful bar traditions in Europe. It is obvious that there are many problems being experienced in both the judiciary itself and in the profession in general. It is unthinkable that regulations, couched in the language of due process and democratisation, that might lead to partisanship and injustice in representation and which, in fact, make justice even more unlikely, can be passed as a fait accompli within a mere 15 days, without even a hint of consultation with the public. Yet, this is exactly what is happening in Turkey.