



The Politicization of Law and the Misuse of Terrorism Charges

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The Politicization of Law and the Misuse of Terrorism Charges: An Analysis Report

The broad and arbitrary use of "terrorism" charges in Turkey continues to raise serious concerns regarding fundamental human rights and the rule of law. These accusations persist in violating essential rights such as the right to liberty and security, freedom of expression, freedom of association, freedom of religion and conscience, the right to a fair trial, the presumption of innocence, and the prohibition of torture.

The police operation conducted in Istanbul on May 7, 2024, and the subsequent indictment serve as a clear example of these unlawful practices. Among those taken into custody during the operation were female minors aged between 13 and 17. The indictment, prepared by the prosecutor's office, exposes a legal aberration in which the minors' routine activities were framed as acts of terrorism.¹

The majority of the assessments included in the indictment serve as a guide to the misuse of terrorism charges. The evaluations under the headings of "legal professionals" and "lawyers" also warrant particular attention, as they illustrate how legal proceedings have been criminalised.

Particularly, due to the baseless accusations made by the government, the meetings and legal support provided by judges, prosecutors, and lawyers—who were unlawfully imprisoned—during their time in detention have been classified as "terrorist activities." Moreover, the act of lawyers offering legal and psychological support to their clients has also been characterised as "terrorist activity."

The indictment alleges that these legal professionals, while in detention, communicated with other detainees in their cellblocks, informing them that their cases before the European Court of Human Rights (ECtHR) would be

¹ https://tr.solidaritywithothers.com/files/ugd/b886b2_364139fe6535408fad8627cf4255eef4.pdf

resolved in their favour, that they would be able to return to their jobs after release, and that they would receive substantial compensations. These evaluations suggest that the legal professionals, by assisting other detainees with their legal defences, were purportedly aiming to "maintain the unity of the organisation's members." Such claims stated in the indictment represent an attempt to criminalise the exercise of the right to defence and the efforts to uphold the rule of law.

This report aims to analyse the indictment in question to demonstrate how terrorism charges are employed as a tool of oppression in Turkey, specifically highlighting how judges, prosecutors, and lawyers who have been imprisoned are targeted during this process. The attempts of these legal professionals to continue performing their professional duties while in detention not only undermine their professional reputation but also threaten the right to defence and the principle of fair trial.

This report evaluates the information obtained through the examination of the case file created as part of the police operation conducted on May 7, 2024.

ROLE AND RESPONSIBILITIES OF LEGAL PROFESSIONALS

Legal professionals play a critical role in upholding the rule of law, ensuring justice, and defending individuals' rights within society. In performing these duties, they are responsible for adhering to ethical standards, advocating for the right to a fair trial, and preserving the rule of law.

The right to a fair trial is one of the fundamental elements of the principle of the rule of law. Lawyers defend their clients to protect this right, ensure the conduct of a fair judicial process, and combat any injustices encountered during the proceedings. Among the most crucial principles of the right to a fair trial is the right to defence, which must be effectively exercised by lawyers.

The right to defence is a fundamental right that allows individuals to advocate for themselves within legal proceedings. Lawyers are obligated to protect their clients' rights, provide legal counsel, and represent them before the courts. It is the primary duty of lawyers to offer the best defence

strategies and to effectively advocate for their clients' rights throughout the process.

Lawyers and legal professionals play a crucial role in upholding the rule of law. The rule of law signifies that no individual or institution is above the law, and that the law must be applied equally to everyone. Legal professionals defend this principle by opposing the politicisation of justice and the instrumentalization of the law. This role becomes particularly critical in situations where the law is used as a tool of political coercion.

Legal professionals play a pivotal role in the defence of human rights. Ensuring and protecting fundamental freedoms necessary for individuals to lead a dignified life is crucial. Lawyers advocate for fundamental rights such as the right to a fair trial, freedom of expression, and the rights to assembly and association, and they combat violations of these rights.

The efforts of legal professionals who have been unlawfully imprisoned to protect their own rights as well as those of other detainees deserve commendation. By leveraging their knowledge and experience to provide legal information, inform others about legal processes, and assist in preparing defences, they exemplify the conduct expected of legal professionals. The criminalization of such activities, especially when used as evidence in terrorism charges, represents a violation of the right to defence and should be viewed as an abuse of the legal system.

CRITICISM OF THE ASSESSMENTS IN THE INDICTMENT

The indictment prepared following the police operation conducted in Istanbul on May 7, 2024, is notably deficient in its legal characteristics and contains significant issues that violate the principles of the rule of law and the right to a fair trial. The assessments under the headings of "lawyers" and "legal professionals" within the indictment clearly reveal an attempt to criminalise the exercise of their professional duties and to use terrorism charges as a basis for such criminalization.

On page 13 of the indictment, the evaluations concerning legal professionals:

"Legal Professionals

The legal professionals in question consist of judges, prosecutors, and lawyers currently in detention. They are alleged to have engaged in activities to persuade detained members of the organisation that they would receive substantial financial compensation upon their release, that their cases would be resolved favourably by the European Court of Human Rights (ECtHR), and that those who confess and acknowledge their guilt would forfeit any compensation. Furthermore, they are accused of misleading detainees into believing that cooperation, and dissolution of the organisation would be unbeneficial, and of assuring those who are released that they would be reinstated to their former positions. Additionally, they are purported to have been responsible for advising detainees on the preparation of their legal defences.”

On page 14 of the indictment, the evaluations concerning lawyers:

“Lawyers

Lawyers are assigned from among the organisation's detained or convicted members within the prisons or from among the lawyers retained by members of the organisation from outside.

The duties of these lawyers are:

Conveying and obtaining information,

To provide legal and psychological support,

To persuade organisation members that they will receive compensation and be reinstated to their former positions.”

In the indictment, the provision of legal support by detained legal professionals to other detainees has been classified as "terrorist activity." This categorization is in clear contradiction with fundamental principles of law. The duty of legal professionals, regardless of circumstances, is to provide legal information and support. The right to defence is an integral part of the fair trial process, and obstructing or criminalising the exercise of this right is contrary to the principles of the rule of law.

In the indictment, the provision of information about European Court of Human Rights (ECtHR) cases, offering legal strategies, and informing detainees that they might receive compensation at the end of their cases

by legal professionals to other detainees in prison has been categorised as "maintaining the organisation's members." Such an assessment distorts the professional responsibilities of legal professionals and the right to defence. Representing such activities as terrorist activities constitutes a serious assault on professional ethics and responsibilities.

The alleged claim by legal professionals that "the irregularities will be reversed by the ECtHR" is not only a reflection of the reality they expressed while performing their professional duties but is also corroborated by decisions issued by the ECtHR. Since 2015, the ECtHR has issued 2,045 violation judgments concerning applications related to the Gülen Movement, awarding a total of €9,394,793 in compensation. Notably, in the Yüksel Yalçinkaya decision by the ECtHR Grand Chamber, it was indicated that over 8,000 files pending before the court and more than 100,000 files likely to come from Turkey would similarly result in violation decisions.

In the Yalçinkaya decision, the ECHR sent 3,000 files to Turkey in batches of 1,000 within a short period and indicated in its correspondence that it would issue similar violation decisions without requesting a defence. Given this data, the evaluations made by legal professionals regarding the violation decisions and compensation from the ECtHR are not merely predictions but reflections of existing legal realities. This situation demonstrates that the allegations of "deception" presented in the indictment distort the truth and that the criminalization of legal professionals performing their professional duties is unjust.

The right to defence is a fundamental element of the right to a fair trial and is critical for upholding the rule of law. The classification of activities by legal professionals exercising their right to defence as "terrorist activities" in the indictment constitutes a violation of this right. This not only undermines the professional reputation of these legal professionals but also obstructs the ability of other detainees in prison to exercise their right to defence. The criminalization by the prosecution of activities related to the right to defence—such as professional efforts, activities, and statements—and the presentation of unrelated high school and university-aged girls as evidence of criminal activity signifies the politicisation of the law and the instrumentalization of justice. This situation undermines not only the trust of

legal professionals but also the confidence of society as a whole in the rule of law and justice. Characterising the performance of legal and professional duties as criminal acts is one of the most blatant examples of the abuse of the legal system.

INSTRUMENTALISATION OF LAW

In recent years, the arbitrary and extensive application of terrorism charges in Turkey has led to violations of the rule of law and the systematic infringement of human rights. These charges have been instrumentalized for the achievement of political and ideological objectives, resulting in significant harm to innocent individuals. The misuse of terrorism allegations in this manner facilitates the legitimization of unlawful practices and sets the stage for the commission of egregious acts.

In ensuring state security, combating terrorism is a crucial tool. However, the misuse of such charges, particularly when employed as a means to intimidate opponents, legal professionals, and those who oppose government policies, undermines the principle of the rule of law. In Turkey, the expanding scope of terrorism allegations has led to their arbitrary application. Individuals and groups with no genuine connection to terrorism have been targeted by these charges, and the judicial processes have been conducted without a proper legal foundation.

The charge of terrorism is being used as a "weapon" not to deliver justice, but to silence political rivals and dissenting voices. These charges have been propagated to instil fear and insecurity within society, targeting legal professionals, journalists, academics, and civil society actors who advocate for human rights. This situation has not only threatened individual freedoms but has also severely undermined confidence in the rule of law.

The instrumentalization of these allegations represents a breach of fundamental human rights and an abuse of the legal system. The targeting and penalization of innocent individuals under such charges not only constitutes a form of lawlessness but also reflects a disregard for humanitarian principles. Such practices illustrate that the state is adopting an oppressive approach towards its citizens and that the law is being wielded as a tool of coercion. The politicisation of justice inflicts

infringement of human rights inflict profound and enduring harm on society and undermine democratic integrity.

The misuse of terrorism accusations causes deep and enduring harm to individuals. The labelling of innocent individuals as terrorists carries profound and lasting consequences for their lives; it fractures their families, destroys their social lives, and causes considerable material and emotional distress. This conduct threatens the harmony of society and the principles of fairness. Moreover, the absence of a solid foundation for these claims undermines public confidence in the judiciary and renders the fair administration of justice unattainable.

The expansion and application of terrorism charges in Turkey in this manner not only breach national law but also contravene international legal norms. Numerous infringement decisions issued by the European Court of Human Rights (ECHR) against Turkey clearly illustrate this situation. The claims made by the accused legal professionals, which are cited as evidence of terrorism in the indictment, not only reflect factual accuracy but also are based on legal realities confirmed by the ECHR's judgments regarding unlawful practices.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The police operation conducted in Istanbul on May 7, 2024, and the subsequent indictment clearly demonstrate how legal professionals, and innocent individuals have been targeted through arbitrary and unlawful accusations. The indictment serves as a stark example of the instrumentalization of terrorism charges, the politicisation of law and justice, the violation of the right to defence, and the distortion of the professional responsibilities of legal practitioners.

The unlawful expansion and misuse of terrorism charges not only threaten individual freedoms but also jeopardise social order and the principle of the rule of law. This report, through a brief assessment of the indictment, reveals the current state of the judiciary system in Turkey and highlights the measures that need to be taken against such practices. The restoration of

the rule of law, the provision of justice, and the protection of human rights are of vital importance for Turkey's democratic development.

Recommendations

1. Restoration of the Rule of Law:

- The restoration of the rule of law in Turkey is crucial for ensuring justice and protecting human rights. In this context, arbitrary and broad use of terrorism charges must be terminated.
- The independence of the judiciary must be ensured, and political pressures on judicial bodies must be eliminated. This is a critical step for protecting the right to a fair trial and preventing the politicisation of the law.

2. Ensuring the Right to Defence

- The right to defence is a fundamental element of the fair trial process, and all necessary measures must be taken to safeguard this right. Effective protective mechanisms should be developed to shield legal professionals from pressure and threats encountered while performing their professional duties.
- Legal professionals and other detainees in prison must be ensured access to legal support, and this right must not be obstructed under any circumstances.

3. Objective and Lawful Application of Terrorism Charges

- The scope of terrorism charges should be clarified, and these charges should only be applied to situations directly related to terrorist activities. Arbitrary and unlawful charges not only violate individuals' rights but also undermine trust in the judicial system.
- The legal support and information sharing provided by legal professionals while fulfilling their professional duties should never be classified as terrorist activities.

4. Compliance with International Legal Norms

- Turkey must ensure compliance with the decisions of the European Court of Human Rights (ECtHR) and international legal norms. The

violation rulings issued by the ECtHR indicate that Turkey's judicial system requires significant reforms.

- The implementation of ECtHR rulings is a critical step for Turkey to demonstrate its commitment to the rule of law and human rights on the international stage

5. Increasing Social Awareness

- Awareness about the misuse of terrorism charges and the targeting of legal professionals should be increased. To prevent such legal abuses, information campaigns should be organised through civil society organisations, human rights groups, and media outlets.
- Strengthening awareness of the rule of law and human rights across all segments of society will contribute to the long-term protection of justice and social peace.



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