

THE ISTANBUL 26TH HEAVY PENAL COURT

Case File No: 2025/96

Legal Proceedings

Against the Istanbul Bar Association Executive Board

AMICUS CURIAE BRIEF

by

TURKEY HUMAN RIGHTS LITIGATION SUPPORT PROJECT

AMNESTY INTERNATIONAL

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE

**EUROPEAN ASSOCIATION OF LAWYERS FOR DEMOCRACY
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GERMAN FEDERAL BAR

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I. Introduction

1. This amicus curiae brief has been prepared by the Turkey Human Rights Litigation Support Project, Amnesty International, the Council of Bars and Law Societies of Europe, the European Association of Lawyers for Democracy and World Human Rights, Human Rights Watch, the German Federal Bar, the International Bar Association's Human Rights Institute, the International Commission of Jurists, International Observatory for Lawyers in Danger, the Law Society of England and Wales, Lawyers for Lawyers, and PEN Norway, a group of lawyers, human rights non-governmental organisations and a legal professional body with extensive experience in international human rights law, the functioning of regional human rights mechanisms, and the protection of the legal profession, as well as particular expertise in freedom of expression as it relates to lawyers and lawyers' associations. It reflects the authors' collective assessment based on the information presented to them by the Istanbul Bar Association ("the ISBA"), publicly available material, and applicable national, regional and international human rights law and standards.
2. The brief assesses the compatibility of ongoing criminal and civil proceedings against the Executive Board of the ISBA with Türkiye's obligations under international and regional human rights law, as well as domestic legal guarantees on the protection of the legal profession. It focuses on two interrelated legal issues: (i) whether the proceedings comply with international and domestic guarantees on the independence and protection of the legal profession; and (ii) whether the proceedings constitute unjustified interference with the rights to freedom of expression and association of lawyers and their professional associations. These proceedings will be analysed in the context of an entrenched pattern of abusive legal proceedings against lawyers in Türkiye which has been documented extensively, including by the UN Special Rapporteur on the independence of judges and lawyers as well as bar associations and NGOs.¹

II. Factual and Procedural Background

3. On 21 December 2024, the ISBA issued a statement² concerning the deaths of journalists Nazım Daştan and Cihan Bilgin, allegedly killed in a Turkish drone strike

¹ See UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, "Report on the Protection of lawyers against undue interference in the free and independent exercise of the legal profession", A/HRC/50/36 (22 April 2022), para 42; Joint submission by Lawyers for Lawyers, the Law Society of England and Wales, the International Bar Association's Human Rights Institute, and the International Commission of Jurists for the UN Human Rights Council's Universal Periodic Review on Türkiye (11 October 2024), paras. 30 and 35 (https://www.lawyersforlawyers.org/wp-content/uploads/2025/02/Joint-UPR-Submission-on-Turkey_Final-11102024.pdf); Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey" (2019), p. 39 (<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>).

² <https://x.com/istbarosu/status/1870494653554029035?t=RMfysJjVEueD9SOTKt-qZw>

in northern Syria.³ The journalists, both Kurdish citizens of Türkiye, had reported on armed clashes between the Turkish armed forces and the PKK in southeastern Türkiye and on the war in Syria between the YPG and ISIS over the last decade,⁴ and reportedly faced charges in Türkiye in connection with their journalistic work.⁵

4. The ISBA statement recalled international legal protections for journalists in conflict zones, called for an effective investigation into the deaths, and demanded the release of lawyers and protesters detained at a public demonstration in Istanbul on the same day, organised to protest the very same incident. The full statement reads as follows:⁶

“According to the information reflected in the press, journalists Nazım Daştan and Cihan Bilgin lost their lives as a result of an attack they were subjected to while following developments in Syria on December 19. Targeting members of the press in conflict zones constitutes a violation of International Humanitarian Law and the Geneva Conventions. Furthermore, targeting civilians who are not parties to the conflict is defined as a war crime under Article 8/2/b/ii of the Rome Statute. Therefore, the rules regarding the protection of journalists working in armed conflict zones are within the scope of International Humanitarian Law.

Again, in [the context of] the press statement intended to be issued [by journalists] in Şişhane Square [as part of a demonstration] regarding the above-mentioned incident, citizens, including four of our colleagues who are members of our Bar, two law faculty students, and dozens of journalists, were detained. While an immediate investigation should have been launched regarding this incident [of the death of the journalists], which violates international law, and those responsible should have been held accountable, the detention of journalists and lawyers who exercised their constitutional rights and mourned for the deaths is an unacceptable situation.

We demand that an effective investigation be conducted regarding the killing of our two journalist citizens and that those detained after making a press statement using their constitutional rights be immediately released. We respectfully announce to the public that we will follow the process.”

5. On 22 December 2024, the State Public Prosecutor announced to the media that an investigation had been launched against the ISBA for the alleged offences of “propaganda for a terrorist organization,” “glorification of an offence and offenders,” and “publicly disseminating misleading information.” On 25 December 2024, the

³ <https://www.gazeteduvar.com.tr/gazeteciler-nazim-dastan-ve-cihan-bilgin-suriyede-olduruldu-haber-1743633>; https://www.lemonde.fr/en/international/article/2024/12/20/two-turkish-journalists-killed-in-north-syria-by-turkish-drone_6736292_4.html#

⁴ <https://bianet.org/haber/oldurulen-gazeteciler-nazim-dastan-ve-cihan-bilgin-kimdir-302878>

⁵ <https://www.birgun.net/haber/diha-muhabiri-nazim-dastan-tahliye-edildi-117432>

⁶ This translation into English was produced by the authors of this brief.

Ministry of Justice granted formal authorisation for the investigation to proceed. On 7 January 2025, the President of the ISBA and its ten board members were summoned as suspects. On 14 January 2025, the Administrative Court of Ankara rejected a petition filed by the ISBA President challenging the proceedings. On 22 January 2025, pursuant to the permission granted by the Ministry of Justice to prosecute, the Bakırköy Public Prosecutor issued an indictment requesting that the ISBA leadership be charged under Article 7(2) of the Anti-Terrorism Law with “propaganda for a terrorist organization”, and under Article 217(A) of the Turkish Penal Code (“the TPC”) with “publicly disseminating misleading information”.

6. In parallel, the Istanbul Chief Public Prosecutor initiated a civil lawsuit with the Istanbul 2nd Civil Court of First Instance on 14 January 2025, requesting the dismissal of the ISBA’s President and 10 board members under Article 77(5) of the Attorneyship Law,⁷ on the grounds that they had acted outside the scope of their legal duties. On 21 March 2025, the court ruled in favour of the petition, ordering the termination of the entire board’s mandate. The decision will take effect if it is upheld on appeal.

III. Legal Standards on the Role and Protection of the Legal Profession

A. International and Regional Legal Framework

7. International human rights law and standards recognise that lawyers and their professional associations, commonly referred to as bar associations, are indispensable to the administration of justice, serving as essential safeguards of the access to justice, rule of law, and the protection of human rights.⁸ The free exercise of the legal profession and access to an independent lawyer represent key guarantees for a practical and effective right to a fair trial, protection of due process, and for the right to equality before the courts.⁹ They are also essential for ensuring respect for the right to liberty and freedom from torture and other cruel, inhuman or degrading treatment or

⁷“A decision to terminate the duties of the responsible bodies of bar associations or the Union of Turkish Bar Associations acting outside their mission and to elect new ones in their place shall be made at the request of the Ministry of Justice or the Chief Public Prosecutor’s Office of their locality, through a simplified trial procedure before the civil court of first instance at the relevant location. The case shall be concluded within a maximum period of three months.”

⁸ See ECtHR, *Tahir Elçi and Others v. Turkey*, App. nos. 23145/93 and 25091/94, 13 November 2003, para. 669; *Sialkowska v Poland*, App. no. 8932/05, 22 March 2007, para. 111; *Mor v France*, App. no. 28198/09, 15 December 2011, para. 42; *Dayanan v Turkey*, App. no. 7377/03, 13 October 2009, para. 32; *Michaud v France*, App. no. 12323/11, 6 December 2012, para. 118; *Morice v France*, App. no. 29369/10, 23 April 2015, para. 132. See also Preamble of the Council of Europe Convention for the Protection of the Profession of Lawyer (CM(2024)191-add1 final), adopted on 12 March 2025.

⁹ See Preamble of the UN Basic Principles on the Role of Lawyers; UN Human Rights Committee, General Recommendation No. 32 (2007), para. 10; UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, “Report on the Protection of lawyers against undue interference in the free and independent exercise of the legal profession”, A/HRC/50/36, 22 April 2022, paras. 9-14 (<https://docs.un.org/en/A/HRC/50/36>). See also, under the European Convention on Human Rights, ECtHR, *Atristain Gorosabel v. Spain*, 18 January 2022, para. 41; *Airey v Ireland*, App no. 6289/73, 9 October 1979, para. 24.

punishment of individuals charged with criminal offences;¹⁰ and more generally are a “chief pillar” of effective protection and implementation of human rights.¹¹ Undue interferences with lawyers may therefore lead to violations of their clients’ rights,¹² while threatening access to justice and oversight of state power.¹³ This fundamental role of the legal profession in a society based on the rule of law is established in international and regional standards, which require states, including Türkiye, to uphold, respect and fulfil key guarantees to ensure that the legal profession can function freely, effectively and independently.¹⁴

i. UN Framework

8. The UN Basic Principles on the Role of Lawyers (1990) (“the Basic Principles”) is the foundational international text on the protection of the legal profession. Principles 16 to 23 emphasise that lawyers must be able to perform all their professional functions freely and independently, without intimidation, hindrance, harassment, or improper interference.¹⁵ Principle 23 affirms that lawyers have “the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights (...) without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.” Principle 16 provides that lawyers should not be prosecuted or sanctioned for actions undertaken in accordance with their professional duties, standards and ethics. The UN Human Rights Committee, which is the body that monitors compliance with the International Covenant on Civil and Political Rights

¹⁰ See Preamble of the UN Basic Principles on the Role of Lawyers; UN Special Rapporteur on torture report, A/HRC/37/50/Add.1 (2017) paras 26-34, 63; UN Human Rights Committee, General Comment no 35 Article 9 (Liberty and security of person), CCPR/C/GC/35 para 58; UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, “Report on the Protection of lawyers against undue interference in the free and independent exercise of the legal profession”, A/HRC/50/36, 22 April 2022, para. 11 (<https://docs.un.org/en/A/HRC/50/36>).

¹¹ See OHCHR and International Bar Association, “Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers” (2003), p. 25; UN Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, “Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers”, A/HRC/53/31, 13 April 2023, para. 7 (<https://docs.un.org/en/A/HRC/53/31>).

¹² UN Special Rapporteur on the independence of judges and lawyers, “Protection of lawyers against undue interference in the free and independent exercise of the legal profession”, A/HRC/50/36, 22 April 2022, para. 11.

¹³ See Communication AL TUR 2/2025 to the Turkish Government on the proceedings against the Istanbul Bar Association (28 February 2025), Mandates of the UN Special Rapporteur on the independence of judges and lawyers, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, p. 3 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29729>).

¹⁴ See Preamble to the UN Basic Principles on the Role of Lawyers.

¹⁵ See also UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, “Report on the Protection of lawyers against undue interference in the free and independent exercise of the legal profession”, A/HRC/50/36, 22 April 2022 (<https://docs.un.org/en/A/HRC/50/36>).

(“the ICCPR”) to which Türkiye is a party,¹⁶ has similarly emphasised that lawyers “should be able to advise and to represent persons [...] in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter”.¹⁷

9. Principle 27 further requires that lawyers be afforded due process protections when facing charges or complaints made against them in their professional capacity. Principle 28 provides that all disciplinary proceedings against lawyers are brought before an impartial committee, statutory authority, or court, and are subject to independent judicial review. These principles must be read in tandem with Principle 29, which requires all disciplinary proceedings to be determined in accordance with the national code of professional conduct, international norms and standards, and in light of all of these principles.¹⁸
10. As recalled by the UN Special Rapporteur on the independence of judges and lawyers, the UN Declaration on Human Rights Defenders (1998) (“the Declaration”) also makes clear that states must ensure the protection of human rights defenders, including lawyers, against retaliation, pressure or any other arbitrary action related to the legitimate exercise of the rights guaranteed by the Declaration (Article 12).¹⁹ Under Principle 14 of the Basic Principles, lawyers’ duties include upholding human rights “in protecting the rights of their clients and in promoting the cause of justice”. This is consistent with Article 1 of the Declaration which states that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”. Similarly, the International Bar Association Standards for the Independence of the Legal Profession, under Standard No. 18 on the Functions of the Lawyer’ Associations, states that lawyers’ associations should promote and uphold the cause of justice without fear or favour.²⁰
11. States must respect and protect the freedom and independence of bar associations, which are recognised as playing a fundamental role in upholding the independence of the legal profession and considered key actors of human rights advocacy and

¹⁶ Türkiye ratified the ICCPR on 23 September 2003.

¹⁷ UN Human Rights Committee, General Comment 32, Article 14, Right to equality before courts and tribunals and to fair trial, CCPR/C/GC/32, 23 August 2007, para. 34, (<https://digitallibrary.un.org/record/606075?ln=en&v=pdf>).

¹⁸ See UN Experts’ Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), Annex, p. 9.

¹⁹ Ibid., para. 17; UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 8 March 1999. See also OSCE, Guidelines on the Protection of Human Rights Defenders, 10 June 2014.

²⁰ International Bar Association Standards for the Independence of the Legal Profession (Adopted 1990) (<https://www.ibanet.org/MediaHandler?id=F68BBBA5-FD1F-426F-9AA5-48D26B5E72E7>).

monitoring.²¹ Independent bar associations serve as institutional safeguards in the protection of lawyers against attacks and restrictions on their independence by state authorities, while ensuring effective and equal access to legal services for all.²² Under Principle 24 of the Basic Principles, lawyers are entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. According to this Principle, the executive body of bar associations must therefore exercise its functions without external interference.²³

ii. Council of Europe Framework

12. The newly signed Council of Europe Convention for the Protection of the Profession of Lawyer (2025) (“the CoE Convention on Lawyers”), although not yet in force, represents the most comprehensive regional codification of the legal standards on the protection of the legal profession to date, and is open to universal signature.²⁴ The Convention is grounded in the recognition of “the fundamental role that lawyers and their professional associations play in upholding the rule of law, securing access to justice and ensuring the protection of human rights and fundamental freedoms”.²⁵
13. Article 4 of the CoE Convention on Lawyers affirms that states must ensure the functional independence of bar associations, and Article 9(5) provides that states “shall refrain from adopting any measures or endorsing any practices that would undermine the independence and self-governing nature of professional associations”. Under Article 4(2)(b), states “shall ensure that bar associations can promote and defend the independence of lawyers and their role in society”.
14. In addition, under Articles 7(2) and 9(4) of the CoE Convention on Lawyers, lawyers and their associations must be able to take part freely in public discussion on human rights and the administration of justice and must not be subject to sanctions for their statements relating to these issues. Article 7(2) provides that states must ensure the right of lawyers and bar associations to:

“promote the rule of law and adherence to it, to take part in public discussion on the substance, interpretation and application of existing and proposed legal provisions, judicial decisions, the administration of and access to justice and the

²¹ UN Special Rapporteur on the independence of judges and lawyers, “Report on bar associations”, A/73/365, 5 September 2018, paras. 8, 19, 83-86 (<https://docs.un.org/en/A/73/365>).

²² See UN experts’ Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), p. 3.

²³ See also Resolution A/HRC/35/L.20 of the UN Human Rights Council on independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, which acknowledges “the vital role of professional associations of lawyers in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements and providing legal services to all in need of them” (<https://documents.un.org/doc/undoc/ltd/g17/167/15/pdf/g1716715.pdf>).

²⁴ CM(2024)191-add1final, adopted on 12 March 2025.

²⁵ Ibid., Preamble.

promotion and protection of human rights, as well as to make proposals for reforms concerning these matters”.

15. These principles are also reflected in Recommendation R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer,²⁶ which provides that states should ensure the freedom of exercise of the profession of lawyer without improper interference from the authorities (Principle I.1).²⁷ The Recommendation supports the need for particular safeguards against pressure on lawyers for their public commentary.²⁸
16. The Recommendation affirms the role of bar associations in defending lawyers’ role in society (Principle V.4.b) and their independence and interests (Principle V.3), including in case of arrest, detention, or proceedings calling into question their integrity (Principle V.5). States should therefore respect and protect bar associations’ independence and their ability to ensure the independence of lawyers and promote and uphold justice without fear (Principle V).²⁹

iii. European Court of Human Rights (ECtHR) Jurisprudence

17. The European Court of Human Rights (“the ECtHR”) has repeatedly underlined lawyers’ essential role in a democratic society and the protection that they enjoy under the European Convention on Human Rights (“the ECHR”).
18. In *Tahir Elçi and Others v Turkey*,³⁰ the ECtHR made clear that given lawyers’ role in the proper administration of justice and in the protection of human rights, criminal and other proceedings against lawyers amounting to persecution or harassment for their professional activities are incompatible with the ECHR:

“The Court would emphasise the central role of the legal profession in the administration of justice and the maintenance of the rule of law. The freedom of lawyers to practise their profession without undue hindrance is an essential component of a democratic society and a necessary prerequisite for the effective enforcement of the provisions of the Convention, in particular the guarantees of fair trial and the right to personal security. Persecution or harassment of members of the legal profession thus strikes at the very heart of the Convention system. For this reason, allegations of such persecution in whatever form, but particularly large-

²⁶ <https://search.coe.int/cm?i=09000016804d0fc8>

²⁷ See also Principle I.3: “Lawyers [...] should have the right to take part in public discussions on matters concerning the law and the administration of justice and suggest legislative reforms”.

²⁸ Principles I.1, I.3, I.4. See also OSCE Guidelines on the Protection of Human Rights Defenders, para. 30.

²⁹ See also Council of Bars and Law Societies of Europe (CCBE), “Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers”, Principle a.

³⁰ ECtHR, *Tahir Elçi and Others v. Turkey*, App. nos. 23145/93 and 25091/94, 13 November 2003.

scale arrests and detention of lawyers and searching of lawyers' offices, will be subject to especially strict scrutiny by the Court".³¹

19. The ECtHR's case-law also makes clear that punishing, sanctioning or prosecuting lawyers for public statements on matters such as the administration of justice and human rights constitutes an undue interference with the freedom and independence of the legal profession, with consequences for states' compliance with their obligations under a range of Convention rights.³² In *Morice v. France* [GC], the ECtHR's Grand Chamber affirmed that lawyers must be able to comment on matters of public concern, especially where their statements contribute to debate on the administration of justice.³³ It held that lawyers' freedom of expression is "related to the independence of the legal profession", which is "crucial for the effective functioning of the fair administration of justice".³⁴
20. In the same vein, in *Bagirov v. Azerbaijan*, the Court found that disbarment and other sanctions imposed on a lawyer for criticising state conduct violated Article 10 ECHR (freedom of expression).³⁵ It noted that disbarment in response to public criticism is "a harsh sanction, capable of having a chilling effect" on lawyers' exercise of their professional duties.³⁶
21. Similarly, in *Tahir Elçi and Others v. Turkey*, the ECtHR emphasised that criminal proceedings against lawyers for alleged terrorism-related offences in relation to their legal work defending persons accused of terrorism offences had an "inevitable chilling effect [...] on all persons involved in criminal defence work or human rights protection".³⁷
22. These protections for the rights of individual lawyers also extend to the legal profession's institutional actors. The ECtHR has emphasised that bar associations "play a fundamental role in ensuring the protection of human rights", affirming that they "must therefore be able to act independently".³⁸ As bodies entrusted with safeguarding

³¹ Ibid., para. 669.

³² Including the right to a fair trial (Article 6 ECHR); the right to liberty (Article 5 ECHR); the right to respect for private life (Article 8 ECHR) and the right to freedom of expression (Article 10 ECHR).

³³ App. no. 29369/10, 23 April 2015, para. 134.

³⁴ Ibid., para. 135.

³⁵ App. no. 81024/12, 25 June 2020, final on 25 September 2020.

³⁶ Ibid., para. 83.

³⁷ ECtHR, *Tahir Elçi and Others v. Turkey*, App. nos. 23145/93 and 25091/94, 13 November 2003, paras. 669 and 714.

³⁸ ECtHR, *Bagirov v. Azerbaijan*, App. no. 81024/12, 25 June 2020, final on 25 September 2020, para. 78; *Jankauskas v. Lithuania* (no. 2), App. no. 50446/09, 27 June 2017, para. 78; *Namazov v. Azerbaijan*, App. no. 74354/13, 30 January 2020, para. 46.

the independence of the legal profession, such associations must be able to issue public commentary and legal assessments without fear of reprisal.³⁹

B. Domestic Legal Framework

23. The domestic legal framework in Türkiye establishes that the legal profession and its representative institutions, including bar associations, are essential components of the justice system. As described below, their independence is both a constitutional imperative and a functional necessity for the rule of law under Türkiye's legal system.
24. The Constitution of Türkiye guarantees the freedom to claim rights and the right to a fair trial, under Article 36,⁴⁰ the right to freedom of expression, under Articles 26⁴¹ and 27,⁴² and the right to freedom of association under Article 33.⁴³ These rights impose corresponding binding obligations on all public authorities under Article 11 of the Constitution. Under Article 90, the rights must be interpreted in accordance with Türkiye's international obligations and must prevail in the case of a conflict with domestic laws.⁴⁴ In addition, Article 135 of Türkiye's Constitution enshrines the role of professional organisations having the characteristics of public institutions in safeguarding the interests and integrity of a given profession and ensuring that it develops in line with the common interest.⁴⁵
25. In Türkiye's legal system, the independence of the legal profession is considered a central guarantee of an effective right to a fair trial.⁴⁶ Lawyers and bar associations are regulated by Attorneyship Law No. 1136.⁴⁷ Article 1 defines the legal profession as a public service and lawyers as independent practitioners. It provides that legal counsel is a cornerstone of the justice system. According to Article 2, the role of lawyers

³⁹ See ECtHR, *Amihalachioaie v Moldova*, App. no. 60115/00, 20 April 2004, final on 20 July 2004, paras. 35-36; where the Court found a violation of Article 10 ECHR due to the conviction for contempt of court of the chair of a bar association for public criticism of a court decision.

⁴⁰ "Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures [...]"

⁴¹ "Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities [...]"

⁴² "Everyone has the right to learn and teach science and art freely, to express and disseminate them, and to conduct all kinds of research in these fields. [...]"

⁴³ "Everyone has the freedom to form associations and to join or leave them without prior permission. [...]"

⁴⁴ Article 90 of the Constitution: "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

⁴⁵ "Professional organizations having the characteristics of public institutions and their higher bodies are public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public [...]"

⁴⁶ See Av. Talay Şenol, "Bağımsız Avukatlık", TBB Dergisi, Sayı 54, 2004, 269-291.

⁴⁷ Adopted 19 March 1969.

includes ensuring the full application of the law. The Attorneyship Law therefore affirms lawyers' essential role in upholding the rule of law.

26. The Attorneyship Law contains safeguards to ensure that the legal profession can fulfil its essential mandate freely and independently. Articles 76 and 95 of the Attorneyship Law establish the statutory mandate of bar associations to protect the profession, uphold the rule of law, and defend human rights. Articles 95 and 97 outline the duties of bar association boards and chairs. Article 77(5) permits their removal only in narrowly defined and serious cases of misconduct or incapacity, where they have acted "outside their mission".
27. In addition, under Article 58, prior authorisation must be obtained from the Ministry of Justice before any investigation can be initiated against lawyers for acts related to their professional duties.

C. Application to the Proceedings Against the Istanbul Bar Association

28. The legal instruments and procedural safeguards in both international and domestic frameworks make clear that lawyers and their representative bodies must be free to perform their duties without intimidation, reprisal, or undue interference from state authorities. Any legal proceedings taken against members of the legal profession must be justified by an objective suspicion of serious misconduct and cannot be based on the legitimate exercise of their professional duties, including through activities or statements that aim to ensure respect for human rights and the rule of law.
29. In the present case, criminal charges were brought against the ISBA's executive board under Article 7(2) of the Anti-Terrorism Law No. 3713 ("propaganda for a terrorist organization")⁴⁸ and 217(A) ("publicly disseminating misleading information undermining the public order to create fear or panic") of the TPC,⁴⁹ based on the ISBA's statement of 21 December 2024.
30. The ISBA's statement does not reasonably or objectively provide any grounds for the allegations underlying the charges against the executive board. The statement's clear and unambiguous meaning and purpose is, first, to express concern regarding potential breaches of international humanitarian and human rights law linked to the deaths of two journalists and to call for an effective investigation; and second, to criticise the arbitrary arrest of lawyers and protesters for attending a peaceful demonstration related to the incident. Nothing in the statement's wording or context indicates "incitement to

⁴⁸ Article 7(2) Anti-Terrorism Law provides: "Any person who disseminates propaganda in favour of a terrorist organisation by justifying, praising or inciting the use of methods constituting coercion, violence or threats shall be liable to a term of imprisonment of one to five years."

⁴⁹ Article 217(A) TPC provides: "Those who publicly disseminate misleading information, exclusively to cause public concerns, fear or panic, regarding the country's internal and external security, public order and general well-being in a way conducive to disturbance of the public peace shall be sentenced to a penalty of imprisonment of a term of one to three years."

violence”, “support for terrorism” or any conduct that could justify the application of counter-terrorism or public order laws.

31. Instead, the statement falls squarely within the ISBA’s statutory mandate under Articles 76 and 95 of the Attorneyship Law to defend and promote the rule of law and human rights, consistent with international law and standards on the protected role of bar associations.⁵⁰ It is also a clear instance of a bar association exercising its duty to defend lawyers’ interests and independence, in line with domestic and international legal standards. The “propaganda for a terrorist organisation” and “disinformation” charges against the ISBA’s board members therefore relate solely to the legitimate exercise of their institutional duties. Such proceedings are incompatible with the prohibition of undue interference with the independence of lawyers.
32. Similarly, the civil proceedings initiated against the ISBA’s board members under Article 77(5) of the Attorneyship Law, which permits the removal of a bar association board in limited and serious circumstances, lack any basis in misconduct or failure of legal duty. The board members were alleged to have acted outside the scope of their legal duties by issuing the statement of 21 December 2024. However, as demonstrated above, the statement constituted a clear exercise of their professional duties as mandated under domestic law and their role in defence of human rights and the rule of law as recognised and protected under international law.
33. The application of this provision by prosecutorial and judicial authorities appears to serve as a punitive mechanism against the ISBA’s exercise of its statutory mandate through lawful, rights-based advocacy. Such use of measures under civil law to penalise the institutional leadership of the bar association for upholding the professional standards required of an independent legal profession violates both the letter and the spirit of bar association protections under Türkiye’s legal framework and international law. Unlawful interference with the ISBA through dismissal of its elected board members undermines the principle of democratic self-governance and independence of professional lawyers’ associations, thereby undermining the capacity of legal professionals to effectively fulfil their mandate.⁵¹
34. In a joint letter addressed to the Government of Türkiye on 28 February 2025, the UN Special Rapporteur on the independence of judges and lawyers; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Working Group on Arbitrary Detention made clear that the criminal and civil proceedings against the ISBA, if confirmed, “would amount to a serious breach of [...] international

⁵⁰ See also UN Experts’ Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), p. 10.

⁵¹ Ibid.

and regional standards” which “provide that the legal profession and its free exercise are an essential element of the rule of law, the protection of human rights, and the functioning of an independent judicial system”.⁵² The letter also draws attention to international standards requiring judges to act independently and impartially, without external interference, and prosecutors to perform their duties impartially and uphold human rights, as well as the importance of the independence of bar associations providing protection for lawyers in the face of restrictions and attack from state authorities.⁵³

35. The UN experts have subsequently confirmed that the prosecution of the ISBA board members and President is incompatible with international standards on the independence of the legal profession. On 30 May 2025, the UN Special Rapporteur on the independence of judges and lawyers; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism issued a public statement asserting that the criminal charges against the ISBA President and members amounted to a misuse of criminal law in breach of international law, constituting an “assault on freedom of expression and lawyers’ rights to practice their profession and express their views in line with international standards”.⁵⁴ The statement affirmed that “[t]he executive body of a bar association must be able to perform its functions without external interference”, and that “[e]fforts to fight impunity, particularly for killings of journalists, should be upheld and not criminalised”.⁵⁵
36. As consistently highlighted in international treaties, instruments, case-law and reports on the independence of lawyers, the persecution and targeting of lawyers due to their work through arbitrary prosecution, dismissal, and other undue interferences has a corrosive effect on the rule of law, public confidence in the legal system, and the ability of legal professionals and human rights defenders to fulfil their role without fear of retaliation.⁵⁶ Given the crucial role of bar associations in ensuring the independence of

⁵² Ibid.

⁵³ Ibid., pp. 9-10.

⁵⁴ UN OHCHR Press Releases, “Criminalisation of Istanbul Bar Association and dismissal of executive board, a chilling attack on the independence of lawyers: UN experts”, 30 May 2025 (<https://www.ohchr.org/en/press-releases/2025/05/criminalisation-istanbul-bar-association-and-dismissal-executive-board>).

⁵⁵ Ibid.

⁵⁶ ECtHR, *Tahir Elçi and Others v. Turkey*, App. nos. 23145/93 and 25091/94, 13 November 2003, paras. 669 and 714; ECtHR, *Igor Kabanov v Russia*, App no. 8921/05, 3 February 2011, paras. 55 and 57; PACE, Opinion on a draft convention for the protection of the profession of lawyer, Opinion 304 (2025), paras. 3, 5, (<https://pace.coe.int/en/files/34151/html>); UN Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, “Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy”, Report, A/HRC/56/62, 21 June 2024, paras. 55 and 70; PACE Committee on Legal Affairs and Human Rights, “Situation of human rights defenders and whistleblowers in

the legal profession, defending lawyers' interests, and promoting human rights, the persecution of such associations' leadership has particularly harmful ripple effects in this respect. As expressed in the UN experts' letter of 28 February 2025, the proceedings against the ISBA leadership "may not only impede the work of the Istanbul Bar Association, but it may also harm the right of people in Türkiye to be informed of legal and judicial affairs, as well as their right to a fair trial".⁵⁷

37. The initiation of criminal and civil proceedings against the ISBA's executive board due to a statement calling for the enforcement of human rights and the rule of law is therefore fundamentally incompatible with Türkiye's obligations to respect and protect the independence of the legal profession.

IV. The Rights to Freedom of Expression and Association: Special Protection for Lawyers and Bar Associations

A. International and Regional Legal Framework

38. The right to freedom of expression, as a cornerstone of a "democratic society",⁵⁸ is protected under Article 10 of the ECHR and Article 19 of the ICCPR, as well as Articles 26 and 27 of the Constitution of Türkiye. This right applies to lawyers not only individually, but also collectively as members of bar associations, especially when they speak out on issues related to the law, justice, and human rights.⁵⁹
39. The right to freedom of expression is intertwined with the right to freedom of association, as enshrined in Article 11 ECHR, Article 22 of the ICCPR, and Article 33 of Türkiye's Constitution. The ECtHR has repeatedly found these rights to be inseparable;⁶⁰ indeed, the exercise of freedom of association often serves to express opinions and to provide a forum for public debate and the open expression of protest.⁶¹ Conversely, freedom of expression facilitates and reinforces the exercise of other human rights, including the right to freedom of peaceful assembly⁶² and the right to

Europe", As/Jur (2023) 24, (<https://rm.coe.int/situation-of-human-rights-defenders-and-whistleblowers-in-europe/1680ad0082>).

⁵⁷ UN Experts' Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), p. 3.

⁵⁸ ECtHR, *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24, para. 49; *Sanchez v. France [GC]*, no. 45581/15, 15 May 2023, para. 145.

⁵⁹ Article 26 of Türkiye's Constitution guarantees freedom of expression "individually or collectively"; see also Article 7(2) of the Council of Europe Convention on the Protection of the Profession of Lawyer (2025); UN Special Rapporteur on the independence of judges and lawyers, "Report on bar associations", A/73/365, 5 September 2018, para. 83 (<https://docs.un.org/en/A/73/365>).

⁶⁰ ECtHR, *Djavit An v. Turkey*, App no. 20652/92, para. 39; *Women On Waves and Others v. Portugal*, App no. 31276/05, 3 February 2009, para. 28.

⁶¹ ECtHR, *Ezelin v. France*, App. no. 11800/85, 26 April 1991, para. 37; *Éva Molnár v. Hungary*, App. no. 10346/05, 7 October 2008, para. 42; *Gorzelik and others v Poland*, App no. 44158/98, 17 February 2004, para. 91.

⁶² UN Human Rights Committee, General Comment No. 34 paragraph 4.

defend human rights.⁶³ This connection is particularly relevant in the context of bar associations, whose institutional mandate includes defending legal standards and promoting the rule of law. The joint exercise of these rights enables such bodies to participate meaningfully in rule of law oversight and legal accountability.

40. The Basic Principles reinforce this view. As discussed in paragraphs 8 and 11 above, Principles 23 and 24 affirm the particular importance of protecting lawyers' rights to freedom of expression, association and peaceful assembly. Principle 23 clearly recognise that lawyers must be able to engage in public debate on legal and human rights matters without facing professional restrictions. Principle 16 further provides that lawyers must not be prosecuted or subject to administrative sanctions for actions conducted in line with their professional duties and ethical obligations.
41. The ECtHR has affirmed the right of lawyers, under Article 10 ECHR, to comment publicly on matters of general interest⁶⁴ and has considered that interference with lawyer's freedom of expression must be assessed in light of its implications for the independence of the legal profession.⁶⁵ In *Morice v. France* and in *Bagirov v. Azerbaijan*, the Court stressed that lawyers are entitled to comment in public on the administration of justice, subject to "the usual restrictions on conduct of members of the bar" and lawyers' responsibilities as intermediaries between the public and the courts, having regard to the importance for bar associations to self-regulate.⁶⁶
42. These rights are also contained in the CoE Convention on Lawyers, particularly Article 7(2), which guarantees freedom of public expression and association in the performance of professional duties.⁶⁷ The UN Special Rapporteur on the independence of judges and lawyers notes: "Freedom of expression and association [...] constitute essential requirements for the proper and independent functioning of the legal profession and must be established and guaranteed by law. Although these freedoms are enjoyed by all persons, they carry specific importance in the case of persons involved in the administration of justice".⁶⁸ The Rapporteur also emphasises that states

⁶³ See UN Declaration on Human Rights Defenders; and Article 2 of the Declaration on Human Rights Defenders +25 (A supplement to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: 25 years on).

⁶⁴ ECtHR, *Mor v France*, App. no.28198/09, 15 December 2011, para. 43; *Amihalachioaie v. Moldova*, App. no. 60115/00, 20 April 2004, para. 35.

⁶⁵ ECtHR, *Morice v France*, App. no.29369/10, 23 April 2015, para.135.

⁶⁶ ECtHR, *Morice v France*, App. no. 29369/10, 23 April 2015, para. 134; *Bagirov v Azerbaijan*, App. no. 81024/12, 25 June 2020, para. 78.

⁶⁷ See also Recommendation R(2000)21 of the Committee of Ministers, in Principle I, Article 3: "Lawyers should enjoy freedom of belief, expression and in particular should have the right to take part in public discussion on matters concerning the law and the administration of justice and suggest legislative reforms."

⁶⁸ UN Special Rapporteur on the independence of judges and lawyers, 1/64/181, 28 July 2009, para. 50.

must not use prosecution, disbarment, or other sanctions to silence lawyers or prevent them from criticising public policies.⁶⁹

43. Heightened protection applies, furthermore, to expression by lawyers and bar associations in the defence and promotion of human rights, as key human rights defenders. The Explanatory Report to the CoE Convention on Lawyers makes clear in this respect that “the role of professional associations and their lawyers also entails a responsibility to ensure the protection of human rights and fundamental freedoms and to promote the rule of law on which such protection depends” and that “[t]his responsibility [...] is fulfilled in part through contributing to public awareness of problems concerning law and practice that they become aware of and then encouraging the adoption of solutions to them”.⁷⁰
44. The ECtHR recognised, in *Taner Kılıç v Turkey (no.2)*, the importance of human rights related activities aimed at raising awareness of alleged human rights violations and ensuring transparency and accountability of state authorities.⁷¹ States have a corresponding duty to protect human rights defenders by providing a safe and enabling environment for their activities,⁷² and restrictions of the right to freedom of expression targeting or punishing these activities are subject to the strictest scrutiny, similarly to restrictions on journalism.⁷³ Measures taken in the name of “combatting terrorism” and “preserving national security” must not be incompatible with states’ international human rights obligations and hinder the work and safety of those engaged in promoting and defending human rights.⁷⁴
45. Bar associations, by their very nature, are institutional actors tasked with safeguarding the independence of the legal profession. Their capacity to issue legal and political assessments of the state’s conduct, particularly in relation to justice and human rights,⁷⁵ must therefore be protected by the strongest applicable standards of freedom of expression and association.
46. As with all restrictions on the rights to freedom of expression and association, any restrictions on the freedom of expression and association of lawyers and bar

⁶⁹ UN Special Rapporteur on the independence of judges and lawyers, A/HRC/26/32, 28 April 2014.

⁷⁰ Explanatory Report to the Council of Europe Convention for the Protection of the Profession of Lawyer, 13 May 2025, para. 59.

⁷¹ ECtHR, *Taner Kılıç v. Turkey (no. 2)*, App. no. 208/18, 31 May 2022, paras. 145-147.

⁷² See UN Declaration on Human Rights Defenders (1998); Esperanza Protocol, p.11; Article 4 of the Declaration on Human Rights Defenders +25 (supra n 63).

⁷³ ECtHR, *Taner Kılıç (no. 2)*, paras. 145-147.

⁷⁴ UN General Assembly Resolution 22/6 on Protecting human rights defenders, A/HRC/RES/22/6, 12 April 2013, para. 10(a).

⁷⁵ See UN Experts’ Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), p. 10.

associations must (1) be prescribed by law, (2) pursue a legitimate aim, and (3) be necessary and proportionate in a democratic society.⁷⁶

Legality

47. Under the three part test to determine whether a restriction on the rights to freedom of expression and association is justified, the *legality test* requires that the legal norm in question be both accessible and foreseeable in its application, meaning that it is formulated with sufficient precision to enable individuals to regulate their conduct accordingly.⁷⁷ Not only must the impugned legal norm have a legal basis in domestic law, it must, furthermore, also be:⁷⁸
- a. Accessible to the person concerned and
 - b. Foreseeable as to its effects, which includes not conferring unfettered discretion on those charged with their enforcement.

48. The respect of the principle of legality is of paramount importance in all instances, but in particular when the state makes use of criminal law.⁷⁹ It is a basic principle of criminal law and one of the main safeguards of the process.⁸⁰ The ECtHR has reiterated that criminal law provisions must clearly and precisely define the scope of relevant offences, in order to avoid a situation where the state's discretion to prosecute for such offences becomes too broad and potentially subject to abuse through selective enforcement.⁸¹

Legitimate Aim

49. Second, under the *legitimate aim* test, any interference with the rights to freedom of expression and association must pursue a legitimate aim, which can only be one of

⁷⁶ This test is enshrined in international human rights treaties. For example, Article 10(2) ECHR makes clear that the interference must be “prescribed by law and ... necessary in a democratic society, in the interests [inter alia] of national security, territorial integrity or public safety, for the prevention of disorder or crime, [or] for the protection of health or morals”. See also UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (12 September 2011); UN Experts’ Communication AL TUR 2/2025 to Türkiye (28 February 2025) (*supra* n 13), p. 7.

⁷⁷ Among others, ECtHR, *Öztürk v Turkey* [GC], App no. 22479/93, 28 September 1999, para. 54; *Rotaru v Romania*, App no. 28341/95, 4 May 2000, paras. 52-55.

⁷⁸ ECtHR, *Kudrevicius and Others v. Lithuania* [GC], App no. 37553/05, 15 October 2015 paras 108-110, and *Djavit An v. Turkey*, App no. 20652/92, 20 February 2003, para 63; UN Human Rights Committee, General Comment No.37, UN Doc. CCPR/C/GC/37, para. 39.

⁷⁹ ICCPR, Article 15 and Article 7, ECHR, Article 7.

⁸⁰ UN Working Group on Arbitrary Detention, Opinion No. 41/2017, UN Doc. A/HRC/WGAD/2018/62, para. 57; UN Economic and Social Council, Siracusa Principles, Principle 17; UN Economic and Social Council, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/13, Principle 50; UN Working Group on Discrimination against Women and Girls, UN Working Group on Arbitrary Detention, Joint amicus curiae in the Federal High Court of Nigeria, *Joy Moses & 5 Ors vs. The Minister*, 3 February 2020, p.11 (https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus_Brief_1_Nigeria.pdf).

⁸¹ ECtHR, *Savva Terentyev v. Russia*, App no. 10692/09, 28 August 2018, para. 85.

those expressly established in the applicable human rights instruments themselves. As such, under European and international human rights law, interference can only pursue the prevention of crime and the protection of national security or public order, including against terrorism.⁸² However, it must be demonstrated that the application of these provisions in this particular case does, in fact, pursue the aim asserted. In its General Comment No. 34 on Article 19 of the ICCPR, the UN Human Rights Committee has made clear that national security and public order “may never be invoked as a justification for the muzzling of any advocacy of [...] human rights”.⁸³

50. National security must not be invoked by states as a pretext to impose vague and arbitrary restrictions on the rights to freedom of expression, peaceful assembly and association.⁸⁴ States should take extreme care to ensure that provisions relating to national security do not result in unnecessary or disproportionate restrictions on the rights to freedom of expression and association.⁸⁵

Necessity and proportionality

51. If an interference with the freedoms enshrined in Articles 10 and 11 of the ECHR and Articles 19 and 22 of the ICCPR complies with the principle of legality and pursues a legitimate aim, it must be assessed if such interference is necessary in a “democratic society”. In order to be necessary, the restriction must be the least intrusive measure amongst those which might achieve its legitimate aim, it should not impair the essence of the right,⁸⁶ and it must also be proportionate, meaning that the impact on the restricted right is smaller than the benefit obtained by the interference.

⁸² See Article 10(2) ECHR and Article 19(3)(b) ICCPR. See also e.g. ECtHR, *Halis Doğan v Turkey* (no. 2), App no. 71984/01, 25 July 2006; ECtHR, *Özgür Gündem v Turkey*, App no. 23144/93, 16 March 2000; *Süreker v Turkey* (no. 2), App no. 24122/94, 8 July 1999; *Müdür Duman v Turkey*, App No 15450/03, 6 October 2015. See also Council of Europe Convention on the Prevention of Terrorism, CETS no. 196, adopted on 16 May 2005, entered into force 1 June 2007.

⁸³ UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (12 September 2011), para. 23.

⁸⁴ Siracusa Principles, Principle 31.

⁸⁵ UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (12 September 2011), para. 23.

⁸⁵ Siracusa Principles; General Comment No. 34, UN Doc no. CCPR/C/GC/34 (12 September 2011), para. 30.

⁸⁶ UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (12 September 2011), para. 23.

⁸⁶ Siracusa Principles; UN Human Rights Committee, General Comment No. 34, para. 34; UN Human Rights Committee, General Comment No. 37, para. 40. In the ruling on *Kudrevicius and Others v. Lithuania*, the ECtHR emphasizes that the proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 of article 11 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (paras. 142-144). Regarding specifically the right to freedom of expression, the Court has consistently upheld an interpretation of the principle of proportionality that encompasses, among other aspects, the requirement for national judges to choose the least restrictive of all the possible measures necessary to protect a properly identified pressing social need: ECtHR, *Axel Springer SE and RTL Television GmbH v. Germany*, App no. 51405/12, 21 September 2017, para.56; *Mouvement raëlien suisse v. Switzerland [GC]*, App no. 16354/06, 13 July 2012, para. 75.

52. Restrictions are justified only where the expression in question gave rise to a pressing social need justifying the interference as a lawful and proportionate response by the state authorities.⁸⁷ The main criteria justifying a restriction on the exercise of the right to freedom of expression are where there is a “call for violence” or “incitement to hatred”.⁸⁸ This should include both a subjective intention to incite terrorism and an objective danger that the conduct will incite terrorism.⁸⁹
53. In assessing the permissibility of these restrictions, the ECtHR takes into account the message and the position of the speaker, as well as the broader context where the dissemination takes place. Based on these criteria, restrictions were found permissible, for example, in cases of clear and direct nexus between a specific piece of inflammatory speech and the actual occurrence of serious acts of violence,⁹⁰ or exacerbation of an ongoing violent conflict.⁹¹
54. The UN Human Rights Committee, in *Marques de Morais v Angola* stated that the “requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”⁹² The UN Human Rights Committee has also explained that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected. The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.”⁹³

B. Application to the Istanbul Bar Association Statement

55. The criminal and civil proceedings against the ISBA’s executive board based solely on the ISBA’s statement constitute a clear restriction of the right to freedom of expression of lawyers and their professional association, protected under Article 10 of the ECHR,

⁸⁷ ECtHR, *Halis Doğan v Turkey* (no. 2), (supra n 82); ECtHR, *Fatullayev v Azerbaijan*, App. no. 40984/07, 22 April 2010; *Özgür Gündem v Turkey* (supra n 82); *Sürek v Turkey* (no. 2) (supra n 82); *Müdür Duman v Turkey* (supra n 82).

⁸⁸ ECtHR, *Gözel and Özer v Turkey*, App. no. 43453/04, 6 July 2010, paras. 56, 60.

⁸⁹ See Article 5 of the Council of Europe Convention on the Prevention of Terrorism; UN General Assembly, “The protection of human rights and fundamental freedoms while countering terrorism: Report of the Secretary General” (28 August 2008), UN Doc. A/63 OHCHR, Factsheet on Human Rights, Terrorism and Counter-Terrorism, p. 42 (www.ohchr.org/Documents/Publications/Factsheet32EN.pdf).

⁹⁰ ECtHR, *Osmani and Others v. the Former Yugoslav Republic of Macedonia*, App. no. 50841/99, Admissibility Decision, 11 October 2001.

⁹¹ ECtHR, *Herri Batasuna and Batasuna v. Spain*, App. no. 25803/04 and 25817/04, 30 June 2009, paras 85 to 91; *Sürek v. Turkey* (No. 1), App. no. 26682/95, 8 July 1999, paras 62 and 63; and *Leroy v. France*, App. no. 52098/99, 15 July 2005, para. 45.

⁹² UN Human Rights Committee, *Marques de Morais v Angola*, Communication No 1128/2002 (2005), para. 6-8.

⁹³ UN Human Rights Committee, General Comment No. 27, para. 14 – 15.

Article 19 of the ICCPR, and reinforced by the intertwined guarantees under Article 11 ECHR and Article 22 of the ICCPR on the right to freedom of association. As emphasised in the UN experts' letter to the Government of Türkiye concerning the present proceedings, lawyers' rights to participate in public discussions on justice and human rights "extend to discussion of compliance with the laws applicable in armed conflict and other public emergencies".⁹⁴

Legality

56. The ISBA board members were charged with "propaganda for a terrorist organization" and "publicly disseminating misleading information" (Article 7(2) of the Anti-Terrorism Law and Article 217(A) of the TPC respectively). The UN Human Rights Committee has emphasised that offences of "praising", "glorifying", or "justifying terrorism" should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with the exercise of the right to freedom of expression.⁹⁵ The ECtHR has consistently held that laws restricting speech must include safeguards against abuse and provide a high threshold, particularly when the speech concerns matters of public interest.⁹⁶ The vagueness of terms such as "propaganda" and "glorification" – including the lack of any threshold for intent, risk, or context regarding "glorification" – raise real concerns about the foreseeability of the effects of these provisions as a basis for interfering with the ISBA board members' freedom of expression and with the independence of the legal profession.⁹⁷
57. Provisions related to "national security", "public order" and "insult" under Türkiye's criminal law have repeatedly been found to be overly broad, vague, and therefore incompatible with the requirement of foreseeability.⁹⁸ Anti-terrorism legislation and national security legislation have both been consistently criticised for failing to provide safeguards against the arbitrary application of these provisions and for being interpreted and applied by prosecutorial and judicial authorities in an expansive and unforeseeable manner, including to target lawyers for their professional activities as defenders of human rights and the rule of law.⁹⁹ This systemic failure is further reflected in the

⁹⁴ UN Experts' Communication AL TUR 2/2025 to Türkiye (28 February 2025) (*supra* n 13), p. 4.

⁹⁵ UN Human Rights Committee, General Comment no. 34 (12 September 2011), UN Doc. CCPR/C/GC/34, para. 46.

⁹⁶ See, at footnote 98, examples of the numerous groups of ECtHR judgments pending implementation.

⁹⁷ See UN experts' Communication AL TUR 2/2025 to Türkiye (28 February 2025) (*supra* n 13), p. 4.

⁹⁸ See in particular the following group of ECtHR judgments pending implementation: *Oner and Turk v. Turkey* (App no. 51962/12, 30 June 2015) (<https://hudoc.exec.coe.int/?i=004-36806>); *Işıkırık v Turkey* (App no. 41226/09, 9 April 2018) (<https://hudoc.exec.coe.int/?i=004-49518>); *Altug Taner Akçam v Turkey* (App no. 27520/07, 25 February 2012) (<https://hudoc.exec.coe.int/?i=004-37189>); *Artun and Güvener v Turkey* (App no. 75510/01, 26 September 2007) (<https://hudoc.exec.coe.int/?i=004-37417>); *Selahattin Demirtaş v Turkey (no. 1)* (App. 14305/17, 22 December 2020) (<https://hudoc.exec.coe.int/?i=004-56539>); *Yüksel Yalçınkaya v Türkiye* (App no. 15669/20, 26 September 2023) (<https://hudoc.exec.coe.int/?i=004-64007>).

⁹⁹ See UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, "Report on the Protection of lawyers against undue interference in the free and independent exercise of the legal

several groups of ECtHR rulings against Türkiye that remain pending implementation before the CoE Committee of Ministers, mainly concerning unjustified and disproportionate interferences with the applicants' freedom of expression on account of criminal proceedings brought against them for expressing opinions that did not incite hatred or violence.¹⁰⁰ As recalled in the UN experts' letter to Türkiye's Government concerning the present proceedings, a conviction for "propaganda for a terrorist organization" cannot be justified unless there is evidence of knowledge or intent to be involved in "acts of terrorism" as defined under international law.¹⁰¹ The criminalisation of criticism of the state or its institutions is incompatible with the principles of a rule of law-based society.¹⁰²

58. Summing up applicable principles under international human rights law concerning the requirement of foreseeability of terrorism laws, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism has emphasised the need to limit offences to conduct that "materially and proximately contributes to the commission of a terrorist act by the group, i.e. death or personal injury for a terrorist purpose", where the person "intend[s] to commit the terrorist offence relating to the organization".¹⁰³ In light of these standards, the application of Article 7 of the Anti-Terrorism Law against the ISBA board members concerning the ISBA statement of December 2024 amounts to an unacceptably expansive and therefore arbitrary application of counter-terrorism legislation. Such an arbitrary application of the law demonstrates a lack of foreseeability and thus a failure to comply with the principle of legality, as enshrined in international human rights treaties, including the requirement of legal certainty in the definition of offences.¹⁰⁴

profession", A/HRC/50/36 (22 April 2022), para 42; Special procedures communications TUR 9/2020, TUR 13/2020 and TUR 5/2024; United Nations Human Rights Committee, Concluding observations on the second periodic report of Türkiye, CCPR/C/TUR/CO/2 (28 November 2024), para. 39; Joint submission by Lawyers for Lawyers (L4L), the Law Society of England and Wales, and the International Bar Association's Human Rights Institute (IBAHRI) to the Committee against Torture's review of Turkey at its 80th Session, 8-16 July 2024 (10 June 2024), pp. 10-12; United Nations Committee Against Torture, Concluding observations on the fifth periodic report of Türkiye, CAT/C/TUR/CO/5 (14 August 2024), para. 38(a).

¹⁰⁰ See *supra* n 98.

¹⁰¹ UN Experts' Communication AL TUR 2/2025 to Türkiye (28 February 2025) (*supra* n 13), p. 10.

¹⁰² *Ibid.*

¹⁰³ Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Ben Saul, in *Yasak v. Türkiye* (Application No. 17389/20) before the European Court of Human Rights (Grand Chamber), paras. 29-30.

(<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/court-submissions/amicus-ecthr-yasak-v.-turkiye-un-sr-ct.pdf>).

¹⁰⁴ In particular Article 7 ECHR and Article 15(1) ICCPR; See Venice Commission, "Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey" (15 March 2016) Doc no., para. 107; UN Experts' communication AL TUR 2/2025 of 28 February 2025 (*supra* n 13), p. 11; Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Ben Saul, in *Yasak v. Türkiye* (Application No. 17389/20) before the European Court of Human Rights (Grand Chamber), paras. 6-10 (*supra* n 103).

59. In addition, proceedings against the ISBA board members rely on Article 217(A) of the TPC on “disinformation”. This provision, introduced in 2022, criminalises “publicly disseminating, purely with the intent to cause anxiety, fear or panic, false information about the country’s internal and external security, public order and general health in a way likely to damage the public peace.” This new provision has been widely criticised by human rights organisations for effectively allowing censorship by providing authorities with unfettered discretion to determine what constitutes “false information” and “intent to cause anxiety”.¹⁰⁵ The CoE’s Commission for Democracy Through Law (“the Venice Commission”) has advised that the provision does not meet the Article 10 criterion “prescribed by law”¹⁰⁶ and that its scope of application must be clarified through clearly defined terms, including the criteria to assess the authenticity of the information.¹⁰⁷ Therefore, proceedings against the ISBA board members under Article 217(A) are not prescribed by law.

Legitimate aim

60. The prosecution of the leadership of a bar association solely for human rights advocacy, in breach of Türkiye’s obligations to respect and protect the independence of the legal profession, and in the absence of any credible evidence of incitement, justification, or praising of violent acts demonstrates an absence of any meaningful link to terrorism or other threats to public order. Both the criminal charges and the civil removal order appear intended not to prevent actual harm, but to punish public legal commentary that is critical of an alleged violation by the state, and which defends human rights. In their public statement of 30 May 2025, the UN Special Procedures confirmed in this respect that the ISBA President’s and executive board members’ prosecution amounts to retaliation for the exercise of their right to freedom of expression and lawyers’ rights to practice their profession and express their views in line with international standards.¹⁰⁸ They highlighted that “weaponising the law” to silence the Bar

¹⁰⁵ See Human Rights Watch, “Turkey: Dangerous, Dystopian New Legal Amendments: New Censorship Threat with Elections Looming”, 14 October 2022 (<https://www.hrw.org/news/2022/10/14/turkey-dangerous-dystopian-new-legal-amendments>); Amnesty International, “Türkiye’s “Disinformation Law” Tightens Government Control And Curtails Freedom Of Expression”, 24 October 2022 (<https://www.amnesty.org/en/wp-content/uploads/2022/10/EUR4461432022ENGLISH.pdf>); Media and Law Studies Association (MLSA), ‘Journalists criticize Turkey’s disinformation law: “Any information not from the government is labeled false”’ (27 January 2025) (<https://www.mlsaturkey.com/en/journalists-criticize-turkeys-disinformation-law-any-information-not-from-the-government-is-labeled-false>); PEN Norway, ‘Criminal sanctions for every comment! Another barrier for journalism: “The Disinformation law”’, March 2025 (<https://norskpen.no/nyheter/en-ny-barriere-for-journalistikken-desinformasjonsloven/>).

¹⁰⁶ Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of The Council of Europe, ‘Türkiye, On the Draft Amendments to the Penal Code Regarding the Provision On “False or Misleading Information”’, Opinion no. 1102 / 2022 (7 October 2022), paras. 50 and 87.

¹⁰⁷ Ibid., paras. 45, 50 and 87.

¹⁰⁸ UN OHCHR Press Releases, “Criminalisation of Istanbul Bar Association and dismissal of executive board, a chilling attack on the independence of lawyers: UN experts”, 30 May 2025

Association not only violates international law but also sets a “troubling precedent”.¹⁰⁹ The proceedings against the ISBA board cannot be considered as pursuing, in good faith, a legitimate aim.

Necessity and proportionality

61. Finally, the *necessity and proportionality elements* of the Article 10(2) and Article 11(2) test are not met. The test requires that any restriction on freedom of expression and association must be necessary in a democratic society and proportionate to the aim pursued. The ECtHR has repeatedly found violations of Articles 10 and 11 ECHR due to Türkiye’s misuse of anti-terrorism laws, public order legislation and other criminal provisions against the legitimate exercise of Convention rights, in the absence of any incitement to violence or hatred.¹¹⁰ The arbitrary and overly broad interpretation and application of criminal law in Türkiye to suppress lawful and legitimate activities have been widely criticised by international legal and human rights organisations and institutions more broadly.¹¹¹
62. In the present case, the ISBA’s statement fails to meet the constitutive elements of the offence the ISBA’s board has been charged with. No evidence has been presented to show that the statement praised or encouraged the use of violence, as required under Article 7(2) of the Anti-Terrorism Law. The statement was neither inflammatory nor unlawful. It contained no endorsement of violence, incitement, or support for any illegal organisation. Nothing in its wording could reasonably be interpreted as promoting violence or hatred.
63. The clear intention of the statement was to call for accountability in relation to potential human rights violations and to defend the human rights of the detained lawyers and journalists, an activity squarely within the bar association’s legally recognised and protected professional mandate. The ECtHR’s case law confirms that even expressions of sympathy toward a proscribed organisation are not sufficient grounds for criminal prosecution in the absence of actual incitement to violence.¹¹² In this case, no such support was expressed or implied, and no part of the ISBA’s statement could

(<https://www.ohchr.org/en/press-releases/2025/05/criminalisation-istanbul-bar-association-and-dismissal-executive-board>).

¹⁰⁹ Ibid.

¹¹⁰ See, supra n 98, some of the numerous groups of ECtHR judgments pending implementation.

¹¹¹ See for example, Amnesty International, “Turkey: Weaponizing Counterterrorism”, Report (2021) (<https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>); the Third Party Intervention by the Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists in the case of *Taner Kılıç v. Turkey* (App. no. 208/18), pp.8-10 (<https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/5d5a7b5ffbeeb000019c7c09/1566210920345/16082019+Kilic+v+Turkey.pdf>); UN Special Rapporteur on the right to freedom of opinion and expression, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his Mission to Turkey”, A/HRC/35/22/Add.3, 21 June 2017, pp. 5-6.

¹¹² ECtHR, *Yalçınkaya and others v Turkey*, App no. 51497, 24 June 2014, para. 34.

objectively be understood as creating a danger of terrorism and associated human rights violations.

64. On the contrary, the public statement issued by the ISBA on 21 December 2024, prompted by the deaths of two journalists and the detention of lawyers and protesters, clearly falls within the association's institutional mandate to protect the rule of law and defend human rights.¹¹³ As described in this amicus curiae brief, heightened protection is warranted in respect to the bar association's role both in ensuring the independence of the legal profession and to its role in defending human rights. The statement's content, calling for legal accountability, human rights protections, legal safeguards, and release of arbitrarily detained lawyers, protestors and journalists, represents precisely the kind of contribution to public discourse that merits the highest level of protection under Article 10 ECHR and Article 19 ICCPR.
65. The dual use of criminal and administrative sanctions in this case, indictment and dismissal, is blatantly punitive, particularly given the content of the ISBA's statement. The ECtHR has warned against the chilling effect that sanctions or threats can have on legal professionals' willingness to participate in public discourse and has found violations of the Convention rights for the exercise of their freedom of expression. It has found, for example, the conviction and sentencing of a lawyer for a public statement to violate Article 10 ECHR.¹¹⁴ Similarly, measures such as disbarment imposed as a result of a lawyer's exercise of freedom of expression have been found to be disproportionate.¹¹⁵ In the present case, the use of criminal legislation on grave national security and public order crimes, carrying serious and lasting consequences, to prosecute elected bar association officials for exercising their institutional oversight, including over potential extrajudicial killings and arbitrary detentions, underscores a lack of any rational or proportionate link between the legal provision and their application in this case.
66. The present case implicates Article 11 ECHR and Article 22 ICCPR, also given that the ISBA's executive board acts as the collective voice of the legal profession in Istanbul, representing over 65,000 lawyers. The ECtHR has recognised that freedom of association encompasses not only the right to form and operate associations, but also the right to express views in pursuit of organisational aims.¹¹⁶ The combined use of criminal prosecution and the dismissal proceedings undermines this collective autonomy and aims to suppress institutional dissent, in clear contradiction of international human rights law standards and the jurisprudence of the ECtHR. These

¹¹³ See UN Experts' Communication AL TUR 2/2025 to Türkiye (28 February 2025) (supra n 13), p. 4.

¹¹⁴ See ECtHR, *Rodriguez Ravelo v. Spain*, App. no. 48074/10, 12 January 2016, paras. 49-50.

¹¹⁵ ECtHR, *Bagirov v Azerbaijan*, App. no. 81024/12, 25 June 2020, para. 83.

¹¹⁶ See ECtHR, *Ezelin v. France*, App. no. 11800/85, 26 April 1991, para. 37; *Éva Molnár v. Hungary*, App. no. 10346/05, 7 October 2008, para. 42; *Djavit An v. Turkey*, App. no. 20652/92, para. 39; *Women On Waves and Others v. Portugal*, App. no. 31276/05, 3 February 2009, para. 28.

measures against the ISBA directly impact the ability of the legal profession in Istanbul to organise and represent their interests and concerns, and therefore their exercise of lawyers' right to freedom of association.

V. Systemic Context and Institutional Chilling Effect

67. The proceedings against the ISBA are emblematic of a broader erosion of legal guarantees safeguarding the independence of lawyers in Türkiye. International legal and human rights organisations have documented a widespread criminalisation of lawyers, often in connection with their legitimate professional activities in defence of human rights and the rule of law, through abusive prosecution under anti-terrorism legislation.¹¹⁷ Such proceedings often lead to their suspension or disbarment.¹¹⁸ This pattern is accompanied by growing political interference in bar association governance,¹¹⁹ including the establishment of parallel bar associations,¹²⁰ and the granting of powers of the President of the Republic to suspend bar association leadership.¹²¹ Interferences also include arbitrary criminal investigations into bar associations across major cities over the past years based on their exercise of the rights to freedom of expression and freedom of assembly,¹²² as well as repeated criminal proceedings for the same expressions.¹²³

¹¹⁷ See International Bar Association: Human Rights Institute and The Arrested Lawyers Initiative, "A Profession on Trial: The Systematic Crackdown Against Lawyers in Türkiye (2024)", paras. 1, 12 (available <https://www.ibanet.org/Turkey-IBAHRI-and-TALI-release-report-documenting-mass-imprisonment-of-lawyers>); UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, "Report on the protection of lawyers against undue interference in the free and independent exercise of the legal profession", A/HRC/50/36 (22 April 2022), para 42; UN Human Rights Committee, Concluding observations on the second periodic report of Türkiye, CCPR/C/TUR/CO/2 (28 November 2024), para. 39; Joint submission by Lawyers for Lawyers, the Law Society of England and Wales, and the International Bar Association's Human Rights Institute to the Committee Against Torture's review of Turkey at its 80th Session, 8-16 July 2024 (10 June 2024), pp. 10-12 (https://www.lawyersforlawyers.org/wp-content/uploads/2024/06/Joint-submission-on-Turkey-for-the-CATs-80th-session_final-100624.pdf); UN Committee Against Torture, Concluding observations on the fifth periodic report of Türkiye, CAT/C/TUR/CO/5 (14 August 2024), para. 38(a).

¹¹⁸ See Joint submission by Lawyers for Lawyers, the Law Society of England and Wales, the International Bar Association's Human Rights Institute, and the International Commission of Jurists for the UPR on Türkiye (supra n 1).

¹¹⁹ See Ibid; Joint submission to UNCAT (supra n 117), paras. 11-15.

¹²⁰ Venice Commission, Explanatory Note on Law no. 7249 of 11 July 2020 amending the Attorneyship Law (no. 1136 of 19 March 1969), CDL-REF(2020)033 (30 June 2020), para. 73; The International Commission of Jurists and Human Rights Watch, "The Reform of Bar Associations in Turkey: Questions and Answers" (<https://www.icj.org/turkey-plan-to-divide-undermine-legal-profession/>).

¹²¹ Presidential Decree No. 5 (Presidential Decree as to the State Inspection Institution), article 6 (See <https://arrestedlawyers.org/2018/09/24/erdogan-gets-infinite-authority-over-the-national-and-provincial-bar-associations/>).

¹²² See Lawyers for Lawyers, "Criminal investigations into bar associations in Turkey", 2 November 2020 (<https://www.lawyersforlawyers.org/criminal-investigations-into-bar-associations-in-turkey/>).

¹²³ See Media and Law Studies Association, "Diyarbakır Bar Association leaders acquitted over April 24 genocide statement", 27 February 2025 (<https://mlsaturkey.com/en/diyarbakir-bar-association-leaders-acquitted-over-april-24-genocide-statement>). See also Media and Law Studies Association, "Ali Erbaş'ın

68. The proceedings against the ISBA’s executive board must be assessed in light of these broader and systematic interferences with the independence of the legal profession, which further indicate that these proceedings lack a legitimate aim and cannot be considered necessary or proportionate. Civil court decisions ordering the dismissal of the ISBA board based on the same facts as the criminal charges magnify the chilling effect on the legal profession’s independence, its ability to defend human rights, and to exercise its right to freedom of expression. These proceedings send the message that public institutions fulfilling their statutory duties may be penalised for voicing concern over human rights violations or calling for accountability. Such a message runs counter to the very spirit of the ECHR, including Article 18 ECHR, which prohibits restrictions of human rights for illegitimate purposes.¹²⁴

VI. Conclusion

69. The criminal and civil proceedings against the ISBA’s executive board constitute a clear misuse of legal mechanisms to target lawyers and their professional association for engaging in lawful, rights-based advocacy. These actions are not only legally unfounded but also emblematic of a broader and systemic erosion of the independence of the legal profession in Türkiye. Far from being exceptional, the proceedings are part of a sustained pattern of executive interference in both the judiciary and bar associations, aimed at stifling dissent, weakening institutional checks on state power, and deterring lawyers from participating in public discourse on the rule of law and human rights.
70. The charges and actions against the ISBA executive board contravene Türkiye’s obligations under international human rights law, including protections for the independence of lawyers and bar associations and for the rights to freedom of expression and association. The proceedings fail to meet the requirements of legality, necessity, and proportionality under international human rights standards and appear to pursue an ulterior political purpose. They must therefore be seen as incompatible with Türkiye’s international human rights obligations.

şikayetiyle yargılanan eski Ankara Barosu yönetimi beraat etti”, 17 May 2023 (<https://mlsaturkey.com/tr/ali-erbasin-sikayetiyle-yargilanan-eski-ankara-barosu-yonetimi-beraat-etti>).

¹²⁴ ECtHR, *Ukraine v. Russia (re Crimea)* [GC], App nos. 20958/14 and 38334/18, 25 June 2024, para. 1335.