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New York City Bar Association Marks Lawyers' Day in Turkey Decries Treatment of Legal Professionals

New York, April 5, 2020 – Today, the New York City Bar Association joins the international community – including bar associations and international human rights organizations around the world – in marking Lawyers' Day in Turkey.

Each year, on April 5, Turkey celebrates Lawyers' Day, paying tribute to lawyers and other legal professionals. In recent years, however, those lawyers and other legal professionals have been forced to labor under extraordinary circumstances in rendering their services.

In the wake of the failed coup of July 15, 2016, the Turkish government declared a state of emergency and enacted a series of "Decree" laws that gravely undercut human rights and the rule of law throughout the country.¹ Although the state of emergency was eventually lifted three years after the attempted coup, in July 2018, many of the "Decree" laws were incorporated into general Turkish law, and the persecution of lawyers and others – begun in the wake of the attempted coup – has continued to this day, including mass arrests, sham trials, and draconian sentences.²

As of September 2019 (the latest information available), nearly 600 lawyers had been arrested, more than 320 had been convicted, and sentences totaling more than 2020 years had been imposed, in the time

¹ "Since the 2016 coup attempt, [Turkish] authorities have dismissed or suspended more than 45,000 police and military personnel and more than 130,000 civil servants, dismissed one-third of the judiciary, arrested or imprisoned more than 80,000 citizens, and closed more than 1,500 nongovernmental organizations (NGOs) on terrorism-related grounds, primarily for alleged ties to the movement of cleric Fethullah Gulen, whom the government accuses of masterminding the coup attempt, and designated by the government as the leader of the 'Fethullah Terrorist Organization' ('FETO')." 2019 Country Reports on Human Rights Practices: Turkey, at Executive Summary (U.S. Department of State, March 11, 2020), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>. (All websites cited in this document were last visited on April 4, 2020.)

² 2018 Country Reports on Human Rights Practices: Turkey, at Executive Summary (U.S. Department of State, March 13, 2019) (reporting that "[t]he two year-long state of emergency – imposed following the 2016 coup attempt – ended July 19, [2018,] but had far reaching effects on the country's society and institutions, restricting the exercise of many fundamental freedoms"; that "[n]ew law and decrees codified some provisions from the state of emergency"; and that "subsequent antiterror legislation continued . . . restrictions on fundamental freedoms and compromised judicial independence and the rule of law"), <https://www.state.gov/wp-content/uploads/2019/03/TURKEY-2018-HUMAN-RIGHTS-REPORT.pdf>.

since the 2016 attempted coup.³ The vast majority of these prosecutions are on vague charges of violating overly-broad “anti-terrorism” laws, intended to suffocate dissent.⁴ Paradoxically, the lawyers are targeted solely because they are fulfilling their professional responsibility to represent their clients who are, in most cases, accused of terrorism-related offenses.⁵ Moreover, the all-too-frequent use of mass trials in cases involving lawyers and lawyers’ associations is highly troubling and implicates fundamental rights and procedural safeguards which are often not respected.⁶

Lawyers’ freedom of association is also under attack. Bar associations and their Presidents and other officers have been high-profile targets for prosecution. At least 14 provincial bar presidents have been detained or arrested, in an attempt to send a “chilling” message to all members of the bar.⁷ And bar

³ See generally Mass Prosecution of Lawyers in Turkey at 1 (Arrested Lawyers Initiative, September 2019) (also reporting that, as of September 2019, “more than 1500 lawyers [had] been prosecuted”), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; *id.* at 10-33, 35-43 (identifying individual lawyers who have been persecuted and compiling information on sentences); 2019 Country Reports on Human Rights Practices: Turkey, at Arrest Procedures and Treatment of Detainees (U.S. Department of State, March 11, 2020) (reporting that, “since 2016[,] authorities . . . prosecuted 1,546 lawyers, arrested nearly 600, and sentenced 274 to lengthy prison terms”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; *id.*, at Executive Summary (stating that “[s]ignificant human rights issues” include “arbitrary arrest and detention of tens of thousands of persons, including . . . lawyers”); Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), available for download at <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

⁴ Mass Prosecution of Lawyers in Turkey at 4-5 (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; 2019 Country Reports on Human Rights Practices: Turkey, at Political Prisoners and Detainees (U.S. Department of State, March 11, 2020) (reporting that that prosecutors use “a broad definition of terrorism and threats to national security,” and that “legally questionable evidence” is used “to file criminal charges against and prosecute a broad range of individuals, including journalists, opposition politicians . . . , activists, and others critical of the government”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; *id.*, at Political Prisoners and Detainees (stating that “[a]uthorities use[] antiterror laws broadly against opposition political party members, human rights activists, media outlets, suspected PKK sympathizers, and alleged Gulen movement members or groups affiliated with the Gulen movement, among others,” although many detainees have “no substantial link to terrorism and [have been] detained to silence critical voices or weaken political opposition to the ruling Justice and Development Party (AKP)”); *id.*, at Freedom of Expression, Including for the Press (stating that “[a]uthorities regularly use[] the counterterrorism law and the penal code to limit free expression on grounds of national security,” prosecuting not only “journalists, writers, editors, publishers, filmmakers, [and] translators,” but also, *inter alia*, “rights activists” and “lawyers”).

⁵ Mass Prosecution of Lawyers in Turkey (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; 2019 Country Reports on Human Rights Practices: Turkey (U.S. Department of State, March 11, 2020) (citing authority for the proposition that “[i]n many cases, lawyers defending those accused of terrorism offenses were arrested themselves” and further stating that lawyers have expressed reluctance to accept cases, “particularly those of suspects accused of PKK [the Kurdistan Workers’ Party, designated as a terrorist organization] or Gulen movement ties, because of fear of government reprisal, including prosecution”; in addition, reporting that “Government intimidation of defense lawyers [has] also at times involved nonterror cases”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>.

⁶ See, e.g., Political trials against lawyers and political activists in Turkey and other countries (European Association of Lawyers for Democracy & World Human Rights) (highlighting, *inter alia*, the trial of 22 lawyers in “CHD Trial I,” which began on December 24, 2013, with the next hearing set for June 4, 2020, in Istanbul). <https://eldh.eu/2020/03/08/political-trials-against-lawyers-and-political-activists-in-turkey-and-other-countries-2/>.

⁷ Mass Prosecution of Lawyers in Turkey at 2-3 (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session

associations' offices throughout Turkey have been shuttered and their assets seized.⁸ More generally, the independence of bar associations is being eviscerated through the abuse of new government powers to inspect bar associations and to suspend their officers.⁹ Similarly, the government is mis-applying the law to deny admission to the bar to all academics, prosecutors, and judges who were summarily dismissed from public service in the wake of the 2016 attempted coup, under the Emergency Regime.¹⁰

The Turkish government is also preventing (or, at a minimum, restraining) lawyers from fulfilling their professional responsibilities, in violation of international law. Lawyers often have only very limited access (or, in some cases, no access) to case files and indictments and other official documentation.¹¹ In addition, lawyers' access to their clients is often unduly restricted, which further impedes lawyers' ability to properly represent their clients.¹² Similarly, the government honors client confidentiality at best in the

(Jan.-Feb. 2020), at *Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations* (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), *available for download at* <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>; *see generally, e.g.*, 2019 Country Reports on Human Rights Practices: Turkey, at *Freedom of Association* (U.S. Department of State, March 11, 2020) (citing bar association representatives' reports of police attending and recording meetings of the organizations, "interpreted as a means of intimidation"), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>.

⁸ *Mass Prosecution of Lawyers in Turkey at 7* (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at *Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations* (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), *available for download at* <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

⁹ *Mass Prosecution of Lawyers in Turkey at 7* (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at *Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations* (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), *available for download at* <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹⁰ *Mass Prosecution of Lawyers in Turkey at 7* (Arrested Lawyers Initiative, September 2019), <https://arrestedlawyers.files.wordpress.com/2019/09/report-september-2019.pdf>; Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at *Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations* (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), *available for download at* <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹¹ 2019 Country Reports on Human Rights Practices: Turkey, at *Arrest Procedures and Treatment of Detainees* (U.S. Department of State, March 11, 2020) (reporting that, in some cases, "attorneys' access to the case files for their clients [has been] limited for weeks or months . . . , hampering their ability to defend their clients"), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; *id.*, at *Denial of Fair Public Trial: Trial Procedures* (stating that "[j]udges may restrict defense lawyers' access to their clients' court files for a specific catalogue of crimes"); Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at *Interference with Lawyers' Professional Duties* (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), *available for download at* <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹² 2019 Country Reports on Human Rights Practices: Turkey, at *Arrest Procedures and Treatment of Detainees* (U.S. Department of State, March 11, 2020) (reporting that "government decrees restrict[] lawyers' access to detainees and prisons – especially for those attorneys not appointed by the state" and that the law's "24-hour attorney access restriction

breach – *i.e.*, it is the exception, and not the rule.¹³ Moreover, as a threshold matter, the accused too often are denied the most basic right to counsel of their choice.¹⁴

The impact of these and other such measures is exacerbated by the drip-drip-drip erosion of judicial and prosecutorial independence resulting from significant changes to the structure of the body that oversees appointments and disciplinary proceedings, which increasingly reflect the influence of the Executive.¹⁵

Ultimately, and taken together, the impact of these and other such measures is to seriously erode access to justice for the people of Turkey.

The independence of the legal profession is an essential element of the rule of law in a free society. Lawyers play a vital and pivotal role in ensuring the protection of human rights and fundamental freedoms for all.

[is] arbitrarily applied”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at Interference with Lawyers’ Professional Duties (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), available for download at <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹³ 2019 Country Reports on Human Rights Practices: Turkey, at Arrest Procedures and Treatment of Detainees (U.S. Department of State, March 11, 2020) (stating that “the law gives prosecutors the right to suspend lawyer-client privilege and to observe and record conversations between accused persons and their legal counsel”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at Interference with Lawyers’ Professional Duties (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), available for download at <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹⁴ 2019 Country Reports on Human Rights Practices: Turkey, at Denial of Fair Public Trial: Trial Procedures (U.S. Department of State, March 11, 2020) (stating that, although “[d]efendants have the right . . . to consult an attorney of their choice in a timely manner,” in some cases “the government [has] coerced defendants to choose government-appointed lawyers”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at Interference with Lawyers’ Professional Duties (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), available for download at <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

¹⁵ 2019 Country Reports on Human Rights Practices: Turkey, at Executive Summary (U.S. Department of State, March 11, 2020) (citing “significant problems with judicial independence”), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>; *id.*, Denial of Fair Public Trial (explaining, *inter alia*, that “the executive branch . . . exerts strong influence over the Board of Judges and Prosecutors (HSK), the judicial body that assigns and reassigns judges and prosecutors to the country’s courts nationwide and is responsible for their discipline”; further observing that “judges’ inclination to give precedence to the state’s interest contribute[s] to inconsistent application of laws,” and that “application procedures for prosecutors and judges . . . [are] highly subjective,” which has the effect of “open[ing] the door to political litmus tests in the hiring process”); Joint Stakeholder Submission to the UN Human Rights Council’s Universal Periodic Review – Turkey, International Coalition of Legal Organisations, 35th Session (Jan.-Feb. 2020), at Threats to Judicial and Prosecutorial Independence (Law Society of England & Wales, on behalf of international coalition of 14 legal organizations, July 18, 2019), available for download at <https://communities.lawsociety.org.uk/lawyers-at-risk/law-society-submits-universal-periodic-review-on-turkey-to-the-un-human-rights-council/6000126.article>.

The right to legal representation is guaranteed by the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is a party.¹⁶

The Council of Europe's Recommendation on the freedom of exercise of the profession of lawyer highlights that "all necessary measures should be taken to respect, protect, and promote the freedom of exercise of the profession of lawyers without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights."¹⁷

Further, pursuant to the U.N. Basic Principles on the Role of Lawyers, governments must ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment, or improper interference.¹⁸ In addition, lawyers "shall not be identified with their clients or their clients' causes." In other words, the position that an attorney advocates on behalf of a client is not to be assumed to be the attorney's personal position and is not to be attributed to the attorney.¹⁹

More generally, everyone has the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by any public authority.²⁰

On this day, as the world casts its eyes on Turkey, observing Lawyers' Day, the New York City Bar urges the Turkish government to take this occasion to re-dedicate itself to the rule of law and to bring an end to the persecution of lawyers and other legal professionals, and human rights defenders more generally.

Most importantly, all such individuals who are being held for peacefully fulfilling their professional responsibilities should be immediately released. News reports indicate that Turkish legislators are presently considering several proposals to release from the country's prisons and jails (either temporarily or permanently, and, in some cases, subject to conditions) tens of thousands who meet certain criteria,

¹⁶ International Covenant on Civil and Political Rights ("ICCPR"), Article 14(3)(b), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁷ Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (Oct. 25, 2000), <https://www.icj.org/wp-content/uploads/2014/10/CoE-rec200021-freedom-exercise-profession-lawyer.pdf>.

¹⁸ United Nations Basic Principles on the Role of Lawyers, Principle 16, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

¹⁹ U.N. Basic Principles on the Role of Lawyers, Principle 18, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

²⁰ International Covenant on Civil and Political Rights ("ICCPR"), Article 19, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

in light of the grave risks posed by COVID-19.²¹ Lawyers, judges, prosecutors, rights defenders, and others deemed to be political prisoners must be included in any such compassionate release.²²

As the world marks Lawyers' Day in Turkey, the membership of the New York City Bar Association is honored to stand shoulder-to-shoulder with the courageous, beleaguered lawyers and other legal professionals of that country. They shine as beacons for us all.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.
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²¹ See, e.g., 90,000 inmates to be released from prison amid virus outbreak: AKP (Hurriyet Daily News, March 31, 2020), <https://www.hurriyetdailynews.com/90-000-inmates-to-be-released-from-prison-amid-virus-outbreak-akp-153453>; Turkey Set to Release Some 45,000 Inmates in Coronavirus Response (U.S. News & World Report/Reuters, March 31, 2020), <https://www.usnews.com/news/world/articles/2020-03-31/turkey-set-to-release-some-45-000-inmates-in-coronavirus-response>.

See generally, e.g., 2019 Country Reports on Human Rights Practices: Turkey, at Prison and Detention Center Conditions (U.S. Department of State, March 11, 2020) (describing prison overcrowding as “a significant problem,” and identifying similar problems with “adequate access to potable water, proper heating, ventilation, lighting, food, and health services” in Turkey’s prisons; further stating that, according to a Ministry of Justice Prison and Correctional Facilities official, as of September 2019, Turkey’s corrections system employed *a mere eight physicians* for a total inmate population estimated at 286,000 prisoners), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>.

²² See, e.g., Turkey urged to include political prisoners in virus release law (Arab News, April 3, 2020), <https://www.arabnews.com/node/1652411/middle-east>; Turkey’s Prisoner Release Should Not Exclude Political Detainees: Rights Groups (New York Times/Reuters, April 1, 2020), <https://nyti.ms/2X1EqAg>; International human rights NGOs urge the Turkish Government not to discriminate against political prisoners (The Arrested Lawyers Initiative, March 25, 2020) (including a copy of Turkey: Call for Action to Protect Prisoners From COVID19 Pandemic -- 25 March 2020, issued by 17 human rights organizations from nine different countries), <https://arrestedlawyers.org/2020/03/25/international-human-rights-ngos-urge-turkish-government-not-to-discriminate-against-political-prisoners/>.