**A Short Political History of the Legal Profession in Turkey**

[[1]](#footnote-1)

**Abstract**

*This paper aims to offer a brief historical account of legislative and professional developments concerning the Turkish legal profession within the larger socio-political against a backdrop of political struggles. The original ideological alliance between the profession and the Republic has been a key determinant of the profession’s positions with respect to social and political issues, especially in the early decades of the new state. The relationship, however, has always been influenced by the changing national and international political context. Whereas the profession seemed content to subordinate itself to the executive until the 1950s, the transition to a multi-party system intensified political polarisation, generating controversies about the profession’s relationship with the State. In the following decades, the global leftward movement encouraged many lawyers to actively challenge illegalities. The increasing authoritarianism and widening social and political cleavages of 1980s and 1990s, by contrast, led to a resurgence of the Kemalist constituency within professional associations. In recent years, efforts by the Government to assert absolute control over the state apparatus have provoked the profession to assume even more visibility as a political actor.*

**Key words:** *Legal profession, law and modernization, law and politics, legal reform, Turkey*

**Early Republican and single party period**

The project of modernisation in Turkey, which took off with the establishment of the Republic in 1923, considered educational reform the primary axis of social change through which a new generation could be shaped (Erozan 2005 : 64; Söğütlü 2004 : 122). Law was the second axis. After the founding of the Republic, driven by the modernisation aspirations and reformist ideals of the new regime, the entire legal apparatus was restructured. This judicial reform also required a new staff of legal professionals who would not only interpret and apply this new legal corpus but guide the thought and behaviour of the people according to Republican principles.[[2]](#footnote-2) Hence, training new legal cadres was an extension of the regime’s aspiration to create its own national intellectuals, who would be mobilised as agents of this modernisation process (Erozan 2005 : 67; Özman 2000). Modern legal education, therefore, emerged as a politically oriented training with a strongly Kemalist orientation. Istanbul University Law Faculty had been established in the late nineteenth-century but was renamed and redesigned in 1933 to conform to the Republic’s ideological aspirations. The new faculty created in Ankara in 1925, however, was charged with producing ‘well educated legal professionals who will protect, teach and improve the law of the Republic’ (Ankara Üniversitesi Hukuk Fakültesi). The emergence of this new profession was also consolidated through legislation and professional associations. The *1924 Muhamat Kanunu* (Legal Professional Code No 460) was the first law institutionalising the profession by regulating entry (including a mandatory internship) and professional competence and establishing bar associations. It limited the profession to Turkish citizens, effecting a ‘nationalisation of bar associations’ reflecting the new State’s aspiration to create a political community freed from all non-national elements (Özman 1995 : 103). Making ‘betrayal of the nation’ a ground for disqualification exposed lawyers to discipline on arbitrary and highly ideological criteria (Karabulut 2013 : 89; Özkent 1940 : 114). Even stronger measures were authorised by the *1938 Avukatlık Kanunu* (Legal Professional Code No 3499), which defined the profession as an independent practice with a ‘public service quality’, subordinating it to the executive in order to guard the ‘public interest’. Paradoxically, lawyers were the principal supporters of state supervision of the profession, arguing this would allow monitoring of a profession that had been ‘set loose’ (Toprak 2014 : 185).

**Multi-party period and military interventions (1946-1980)**

Until 1950s, the legal profession, considering itself the guardian of the Kemalist regime, seems to have kept a rather stable alliance with the State. The transition to a multi-party system in 1946, however, not only terminated the privilege of Atatürk’s party, the Cumhuriyet Halk Partisi (Republican People’s Party – CHP) in state administration, but also introduced an ideological conflict between the profession and the new ruling party under Adnan Menderes, the Demokrat Parti (Democrat Party – DP). When many judges were forced to retire in 1957 and replaced by the DP’s political appointees, legal professionals declared their solidarity with the judiciary. Hence, in the face of the government’s repressive measures and promotion of political Islam as an anti-communist strategy, legal professionals maintained their ideological position as protectors of the regime. This was manifested again in the profession’s support for the 1960 coup, which the legal community played a major role in legitimating, not only by remaining silent in the face of trials and executions but also by prohibiting lawyers from defending members of the ruling party.

In the 1960s and 1970s, however, paralleling the global ideological shift to the left, the legal profession started to move from its role as guardian of the Kemalist regime to a more diverse political engagement. One indicator of such polarisation within the Istanbul Bar Association was the emergence of Çağdaş Avukatlar Grubu (the Modern Lawyers Group – ÇAG), a ‘loose politically oriented platform’ with a leftist constitution, and Meslek Birlik Grubu (the Professional Unity Group), a right-wing group (Öngün & Hassan 2013 : 143). Although the latter won the 1974 Bar elections, ÇAG defeated it two years later, retaining power until now with brief interruptions and despite internal divisions. Particularly in the first couple of presidential terms, the ÇAG-led Istanbul Bar was actively involved in everyday politics through a series of protests against unconstitutional, extrajudicial and illegal practices by the State and the military. Professional developments during this period also reflected these shifting alliances and political complexities. The most significant was the *1969 Avukatlık Kan*unu (Legal Profession Code No 1136), which remains the principal legislation regulating the profession despite many changes. Against a backdrop of increasing demands for freedom worldwide and enactment of the 1961 Constitution, the 1969 Code was drafted in response to the legal profession’s quest for greater autonomy from the executive. One of its primary achievements was establishing the Türkiye Barolar Birliği (Union of Turkish Bar Associations – TBB) as the umbrella professional organisation located in Ankara and transferring responsibility to it (from the Ministry of Justice) for supervising and monitoring individual bar associations. This had significant implications for the relationship between the State and the profession as the TBB resisted the repressive policies of an executive confronting an increasingly violent socio-political environment.

**1980s-1990s**

The malicious military coup on 12 September 1980 in the face of increasing political instability and violence shaped the succeeding decades. During the junta period, all political parties were banned, Parliament was dissolved, and the 1961 Constitution was replaced by the highly authoritarian and repressive 1982 Constitution. By 1988, reflecting the authoritarian character of the junta, the 1969 Legal Profession Code was already amended seven times to include ever more repressive provisions. Amendments included greater executive supervision over the profession through limitations to activities of bar associations, mainly in the form of prohibiting political engagement of any kind, or empowering organs of the executive to dismiss elected bar administrators in urgent cases threating the ‘existence, independence and integrity of the State and nation’. This increasing authoritarianism was accompanied with a burnout among lawyers concerning reactionary politics. In the 1983 Istanbul Bar elections, the association’s political involvement caused ÇAG to lose the presidency after three terms, replaced by Birleşmiş Avukatlar Grubu (United Lawyers Group*)*, representing the more conservative wing, whose campaign discourse focused on ‘saving the Bar’ from political struggles by shifting attention to purely professional matters (İnanıcı 2008 : 177). This transfer of power from ÇAG was interpreted as indicating lawyers’ desire for ‘peace and stability’ and a return to a narrower political involvement limited to ‘preserving the State and its Kemalist values’ (Silverman 2017). When ÇAG regained power toward the end of the 1980s, however, the Bar again assumed an active role in politics.

The 1990s saw further divisions among coalitions within the Istanbul Bar Association, especially the rise of a Kemalist group among ÇAG lawyers. The founding of Önce İlke- Çağdaş Avukatlar Grubu (Principles First-Modern Lawyers Group – Öİ-ÇAG) was the first official split within ÇAG and an expression of its egalitarian approach to Islamic revivalism. Starting in the early 2000s, Öİ-ÇAGgained power by mobilising older lawyers, thereby managing to shape the politics of the Istanbul Bar Association in the following two decades (Öngün & Hassan 2013 : 150). Political sectarianism was not limited to the Istanbul Bar. The Izmir Bar Association, infamous for its unanimous commitment to a secular Kemalist leftism, has never had a right-wing president. However, its unity was shattered in 2002 when Izmir ÇAG also split into two groups over the 1997 postmodern coup[[3]](#footnote-3) and the headscarf debate it sparked. The new fraction, called Cumhuriyetçi Avukatlar (Republican Lawyers), focused on the primacy of a Kemalist secularism with respect to the political visibility of Islam. ÇAG, by contrast, was increasingly identified as pro-Kurdish and accused of being a PKK supporter.

**AKP Period (2002-2017)**

The early-twenty-first century was marked by political pressures for democratisation and a wave of legal changes constituting the most comprehensive reform after the early Republican period. In the 2002 elections, only the CHP and the newly establishedpro-Islamist Adalet ve Kalkınma Partisi (Justice and Development Party – AKP).

led by Recep Tayyip Erdoğan managed to get Parliamentary seats. With 34 per cent of the votes, AKP initiated a period of single-party rule after a decade of coalitions characterised by economic fluctuations and political uncertainties. In its first term, AKP was an ardent supporter of harmonisation that also had a direct consequence for the regulation of the legal profession. The 2001 amendments to the 1969 Code, in particular, introduced revolutionary changes such as the recognition of the profession as a tier of the judiciary, thereby increasing lawyers’ public and professional credibility and identifying advocacy as a prestigious profession deserving protection by the State, not monitoring. This change was also meaningful in the context of provisions replacing the Ministry of Justice with the TBB as final authority on professional issues, like registering lawyers in or removing them from the Bar, prohibiting them from working, or disciplining them. Increasing the quality of legal services was another concern addressed by provisions regarding entry, professional boundaries and rules of conduct such as the introduction of the compulsory Bar exam for harmonising the differences in legal education stemming from rapid increase in the number of law faculties.[[4]](#footnote-4)

Nevertheless, the Government’s Islamist pedigree continued to raise serious anxieties among Kemalist segments of the population, including the legal profession. In 2007, controversies around the upcoming presidential election, triggered by the possibility of Erdoğan winning, was followed by mass demonstrations called ‘republican meetings’. These protests mainly organised by Kemalist civil society mobilised thousands of people concerned about the visibility of the Islamist lifestyle in public life and especially about the nomination of a pro-Islamist politician as the President. Following a period of constitutional battles over presidential elections, in the evening of 27 April, the military intervened again, publishing an e-memorandum on its official web site declaring its determination to guard the foundational principles of the Republic, pre-eminently secularism. In 2008, however, the constitutional crisis was further intensified by a so-called judicial coup in the form of a closure case against AKP for becoming ‘the focus of anti-secular activities’.[[5]](#footnote-5) Meanwhile, the AKP’s 2010 constitutional amendments, framed as a means of ‘getting rid of the legacy of 1980 coup’, were approved by 58 per cent of the electorate. The constitutional package was promoted as an opportunity to liquidate the ‘authoritarian, statist, and tutelary features of the 1982 Constitution’, thereby garnering support from the intelligentsia and further enhancing the legitimacy of AKP’s populist programme (Özbudun 2012).

In summer 2013, amid social and political tensions provoked by controversies around the role of the headscarf in public life, allegations of illegal wiretapping of the judiciary, intensifying police violence, devastating earthquakes, and violations of rights and freedoms, Turkey witnessed a nationwide uprising commonly referred to as the ‘Gezi events’, in which thousands demonstrated against the repressive policies. In June 2015 elections, when the Halkların Demokratik Partisi (Peoples’ Democratic Party – HDP), which championed Kurdish rights, entered the Parliament, passing the 10 per cent parliamentary threshold, AKP lost its majority for the first time, only to regain its ruling position in November 2015 early elections with a promise of stability in the face of increasing violence. However, 2016 ended up being one of the most violent years in Turkish history, with numerous suicide bombings, a constant increase in attacks on women and children, greater use of force by the police, and arrests of journalists, academics, politicians and civilians on terror charges. A *Petition of Academics for Peace Initiative* signed by 2,000 scholars further intensified the tension between the Government and opposition leading to numerous arrests and indictments. The situation became even more critical when the 15 July 2016 failed coup attempt shattered the already unstable political and social environment, leading to a long-lasting state of emergency. The constitutional referendum of April 2017 proposing to expand presidential powers was held in this tense atmosphere, with yes votes barely exceeding the opposition (51 per cent).

After AKP’s first term, bar associations and the TBB adopted a critical attitude toward the government. In December 2007, a rally for an independent judiciary was organised by TBB and joined by representatives of civil society organisations and bar associations, as well as members of the judiciary, academia, and military. After 2009, the legal profession reacted even more frequently and forcibly to the increasing politicisation of legal issues and threats against judicial independence. Politically motivated actions by the Ministry of Justice, such as requesting the dismissal of judges based on unconstitutionally gathered information, were particularly troubling. The Istanbul Bar Association condemned these developments as clear evidence of the Government’s determination to control the judiciary and replace existing judges with its own loyalists. Professional organisations also criticised the 2010 constitutional package, warning that the proposed changes would violate separation of powers and benefit the executive. TBB was also concerned about the arrest of judicial staff, high ranking military officers, and lawyers in the *Ergenekon*, *Balyoz[[6]](#footnote-6)*, and *KCK[[7]](#footnote-7)* cases and rising police violence against journalists and lawyers.

Until 2013, however, TBB maintained a serious, professional and legalistic tone in its public statements, even prompting CHP to criticise the TBB President for being too reticent in addressing the emerging legal and political crises. With the election of Metin Feyzioğlu as TBB Chair, however, its administration assumed a much more defiant stance, with a very explicit Kemalist and Republican outlook. This administration often has admonished the government, with Feyzioğlu making more frequent, confrontational public appearances. On 10 May 2014, during his speech at the 146th anniversary of the Council of State, Prime Minister Erdoğan stalked out of the auditorium, accusing Feyzioğlu of ‘being shameless’ in commenting on political matters about which he knew nothing. The September 2014 Judicial Year Opening Ceremony was boycotted by many cabinet members, including then President Erdoğan, who were protesting the inclusion of Feyzioğlu in the programme.[[8]](#footnote-8) In November 2014, the Government annulled the legislative basis of this ceremony, accusing it of becoming a political occasion to attack the Prime Minister (Hürriyet 2014). In 2015, the ceremony was split in two, one organised by the Court of Appeals and attended by the President and another ‘alternative opening’ organised by TBB with the participation of bar associations and CHP Chair.[[9]](#footnote-9) In 2016, when the Judicial Year Opening Ceremony was held at the presidential complex with a talk by the President for the first time, TBB refused to participate.

Meanwhile, Erdoğan and the AKP Government continued accusing TBB, and especially Feyzioğlu, of improper involvement in political issues, asking him to ‘take off his robe and do politics’. His engagement with politics was most vividly epitomised by his participation in the campaign on the April 2017 referendum. Travelling around the country and abroad, Feyzioğlu claimed that he had ‘hit the road’ to let people know that the proposed amendments would expand the President’s power, propelling Turkey towards a more authoritarian system. TBB was ‘enlightening everyone on a vital issue that was above politics’, a responsibility vested in it by the 1969 Code. Although these meetings were entitled ‘we are discussing the Constitution’, they were more about why people should say no to proposed amendments than how they could make an informed choice. Feyzioğlu was usually accompanied by several influential figures from the Kemalist establishment during these gatherings, which were organised by popular Kemalist civil society organisations and supported by local bar associations. Consequently, when Feyzioğlu was invited to the 2017 Judicial Year Opening ceremony as a guest, not as a speaker, TBB announced it would not attend ‘just to applaud’, escalating tensions between the executive and the profession.

**To Be Continued…**

This summary is intended to be an introduction to a more comprehensive work on the origins and developments of the Turkish legal profession. For the moment, it is possible to state that these struggles are in fact meaningful in a socio-political context where TBB has never functioned as a true corporatist structure cooperating with the government to pursue its own economic and professional interests (Elveriş 2014). Turkish lawyers have always been advocates of political and ideological values and principles (Kalem 2010; Özman 1995). Its historical ideological alliance with the Republic determined the profession’s positions with respect to social and political issues, especially in the early decades of the new state. Despite increasing political polarization among lawyers especially after 1980s with the emergence of different groups in bar associations, in the last two decades, and particularly during AKP rule, there seems to be a strong resurgence of the Kemalist constituency within the professional associations.

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1. . [↑](#footnote-ref-1)
2. The term ‘legal professional’, which is primarily associated with practising lawyers in Anglo-Saxon countries, has a much wider ambit in Turkey, where it includes judges, prosecutors, practising lawyers and notaries. It is in this sense closer to concept of *jurist* employed by some scholars. In this short text, however, I follow the Anglo-Saxon usage. [↑](#footnote-ref-2)
3. Known as the 28 February post-modern coup when the military issued an ultimatum to the Government in the name of the Republic and ‘democratic values’. [↑](#footnote-ref-3)
4. In 2006, the provision was annulled by Parliament just before the first exam was to occur. In 2009, however, the Constitutional Court overturned that action, declaring that the public demanded qualified lawyers. The Court reasoned that minimal legal training was insufficient to practise law and professional competence could be achieved only through special training and selective entry. Nevertheless, by 2017 the examination still had not been administered. [↑](#footnote-ref-4)
5. The case was overruled by a close vote, and AKP was merely deprived of state funding. In December 2009, however, the Court affirmed the closure of the Demokratik Toplum Partisi (Democratic Society Party – DTP), representing Kurdish voters, because of its alleged activities ‘against unity of the State with its nation’. [↑](#footnote-ref-5)
6. A series of high-profile trials of politicians, bureaucrats, academics and journalists, high-ranking military officers, including the former Chief of Staff, accused of being members of an organised criminal conspiracy against the democratically elected government. [↑](#footnote-ref-6)
7. Trials of Kurdish politicians and rights activists for being members of Kurdish Communities Union (KCK), the alleged urban wing of PKK. [↑](#footnote-ref-7)
8. Each year the anniversaries of high courts like the Council of State and Court of Appeals are celebrated with ceremonies including members of the judiciary and high state and government officials. The Judicial Year Opening Ceremony, held at the Court of Appeals in early September, is another symbolically significant gathering for the judiciary. Traditionally, the TBB Chair is expected to deliver a speech at all these gatherings as a sign of the indispensability of defence for the judiciary. These speeches are usually full of references to major contemporary political and social issues (Elveriş 2014). [↑](#footnote-ref-8)
9. This cooperation between TBB and CHP has also been criticised by lawyers (Elveriş 2014 : 91 – 92). [↑](#footnote-ref-9)