

Details We Overlook in The Multiple Bar Amendment to The Lawyers Act

"Amendment to The Lawyers Act and Some Other Laws" ("Amendment") was recently added to the already crowded agenda of our country. Although the Amendment is getting quite a lot media coverage, most of the discussions I was able to follow were on a political level and did not get into the actual amendments and their consequences as much. Unfortunately, we are familiar with this type and level of discussion. However, there is one detail introduced by the Amendment and not much discussed in the media which may have very important consequences and may make the Amendment affect not only the lawyers but also those who will retain lawyers in the future. That is why the Amendment needs to be discussed bravely and in more detail and its consequences be understood by everyone.

1) Changes to pay attention in the Amendment, their consequences and purposes

It will be possible to set up multiple bars each having more than 2000 lawyers in cities which have more than 5000 lawyers. Based on Turkish Association of Bars as of December 12, 2019, there are only 3 bars in Turkey which have more than 5000 lawyers, Istanbul (46,052), Ankara (17,598) and Izmir (9,612).

The candidates supported by the current ruling party did not win any elections for Istanbul, Ankara and Izmir bars. Looking at the difference between their votes and those candidates who got elected, it looks like they will not win in the future either. This bothers the ruling party. I am not sure why it does by the way. Legal aid and CMK lawyer appointment budgets (money paid by the bar to lawyers appointed by the bar to those who cannot afford it in civil and criminal cases) of the bars affected by the Amendment is not that high. Based on 2019 budgets for these 3 bars affected by the bar and the potential bars to be established in these cities, the funds which will be available to those bars supported by the ruling party will be TL10m at most. Considering the monetary gains resulting from previous and similarly difficult to make sense legal changes, this is quite a small carrot.

I do not believe the motivation for the Amendment is to stop political influence by the bars closer the opposing parties. I also do not believe bars managed to put any meaningful pressure on the ruling parties in the past anyways.

The main reason for the Amendment is to put pressure on the lawyers through disciplinary procedures. Turkish bars are members of the Turkish Bar Union ("TBU") and TBU general assembly is where you appeal disciplinary rulings of the bars for lawyers registered with them (and also the decisions that there is no need for a disciplinary investigation). The decisions of the TBU general assembly for heavier penalties for lawyers may further be appealed at Danıştay, the High Administrative Court, but for others, the ruling of the TBU general assembly is final. In any case, being dragged into an unjust procedure as such will be sufficient deterrence, the fact that some of those decisions may be overturned at Danıştay will not change the reality of the pressure which will be imposed.

Currently each bar sends representatives to the TBU general assembly based on the number of lawyers registered with them. Each bar sends 2 representatives automatically and then 1 representative for each 300-lawyer registered with that bar. As you can see, the current system is quite democratic. Istanbul, Ankara and Izmir bars contain around half of the lawyers in Turkey lawyers and send 46% of the

representatives to the TBU general assembly. This means that unless the candidates supported by the ruling party wins bar elections in these 3 big cities, they will not be able to control the TBU general assembly and it is not possible to insert pressure on lawyers without controlling the TBU general assembly. If the Amendment is enacted in its current form, although it is not possible to be certain without knowing the number of bars which will be established in each such 3 big cities, the total representation of Istanbul, Ankara and Izmir is expected to fall down to less than 10%. As a result, it will be possible to insert pressure on lawyers not close to the ruling party who will have already been polarized and blacklisted.

2) Baseless arguments made in favor of the Amendment

The official reason of the Amendment says it is to fix problems of the lawyers in the profession, yet there is not a single section in the Amendment which talks about a specific problem or its fix.

The supporters of the Amendment claim that the lawyers are not happy with the services of their bars and show the participation rates of the lawyers to the elections of their bars as an indication thereof. The participation to the most recent elections for the Istanbul Bar was around 65%. This is not much different compared to the participation rates of bars with less than 5000 lawyers or bars of foreign cities. This means that this is not a meaningful indicator of whether lawyers are happy with the services they get from their bars.

In addition, there doesn't seem to be a meaningful difference between crowded and un-crowded bars in terms of responding to legal aid or CMK lawyer requests. So, the services are not poorer in crowded bars. If there is a discontent, it is the same in crowded and un-crowded bars.

Supporters of the Amendment claim that the big bars act together with and as part of the opposing parties. They probably have not made the effort to check, but when we look at all bar presidents elected in Turkey since the ruling party came into power, 49 have been AKP (ruling party) members or candidates/actual parliament members for AKP, 45 for CHP, 7 for MHP, 5 for HDP, and 199 presidents had no such political affiliation. This means majority of bar presidents do not have a political affiliation and among those who have, AKP is the leader. This also means that this argument is also baseless. Also, it is one the duty of the bar to protect lawyers' rights and also rule of law. I cannot remember any action of the ruling party in favor of lawyer rights or rule of law, we always went backwards. So, it is only natural that the positions of the bars and opposing parties (whose main purpose to oppose the ruling party) coincided in this respect.

There is also the "this (multiple bar) system works in other countries, such as America" argument. I wonder people making this argument have bothered to check what actually is the system in the US is. Firstly, US has a federal system and bars are organized at state level, not federal level. So, any comparison, if we really should be to New York or California bars as an example. As a New York admitted lawyer who practices law in New York for 2 years, there is only one bar that lawyers must register to practice in New York, and any other state I know of. The name of that bar is New York Bar. There is however also the New York City Bar Association in New York, which is voluntary to become a member, is an association by law, no different than many associations established by lawyers in Turkey which are

voluntary to become a member. I wonder if the supporters of the Amendment get confused because such associations contain the word "bar" in their names.

I also checked the system in many other countries but could not find an example similar to the one being introduced by the Amendment.

3) Problems which will arise in practice

There will be differences in the practices of different bars in the same city.

Intern lawyers will have to consider the political inclination of the lawyers they will intern with.

Lawyers will start acting as politicians which will negatively affect the profession and its freedom, a profession which is not even allowed to make any advertisement to protect its freedom.

Since the lawyers will no longer be represented democratically in TBU, decisions objected by the majority of the lawyers will be taken and this will negatively impact the profession.

Some lawyers will be pickier in choosing clients and opposing parties because they will be concerned about potential disciplinary consequences. This means it will be harder to retain the lawyer you want.

As a result, we are faced with a proposal which will negatively affect our legal system even further, the main purpose of which is to establish pressure of lawyers similar to the pressure established on prosecutors and judges with the changes made to the formation of HYSK (High Council of Judges and Prosecutors) by the 2010 referendum. I hope that the members of the parliament, at least those who are lawyers, to take these into consideration when voting to enact the Amendment.

Av. Hakan Yazıcı