



"Demonstration in Taksim square, Istanbul, June 2013."  
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TURKEY

# PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

**The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#).** It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

## Introduction

Turkey is a country in continued transition and evolution that has been directly affected by the Arab Spring, due to its geographic position and its stature of country in democratic transition located between Europe and the Middle-East, and with a very specific conformation of Islamic government and secular state. Turkey is a member to the European Convention on Human Rights, which implies very strict obligations, and it has been engaged for years in an uneven process of adherence to the European Union.

While the *coup d'état* of September 12, 1980 had *de facto* curbed all the fundamental rights including freedom of expression, association and assembly, they were *de jure* restricted with the Constitution that came into effect on November 9, 1982. The 1982 Constitution was amended 17 times including the last one with the referendum of September 12, 2010 and a new constitution is currently under discussion, although the discussions seem to be in a dead end at the time of writing this study.

In the same time, a negotiated solution process is under way between the government and the Kurdistan Workers' Party (PKK), trying to put an end to three decades of deadly conflict and freedom restrictions. Indeed, since the 1980s ruling parties have been reluctant to enlarge fundamental rights and freedoms by legitimating restrictions with security reasons and the fight against terrorism. The negotiation of accession to the EU has allowed the amendment of hundreds of legal provisions to better protect human rights and democracy.

However, a long way remains to upholding fundamental rights and freedoms. Thousands of political activists, human rights defenders, trade unionists, lawyers and intellectuals, are detained under anti-terror law for their peaceful activities. Recently, the peaceful "Taksim Square" protests in Istanbul that quickly spread throughout the whole country, were met with fierce repression by police forces and numerous judicial and administrative investigations against peaceful protesters. These events have shed light on the authoritarian ways of Turkish authorities, their uncurbed use of excessive force against peaceful protesters and their use of the judiciary as a means of retaliation against criticism.

This study will look at the legal and institutional framework governing freedom of assembly in Turkey, as a first step to understand what happens in practice and what reforms should be undertaken to better promote human rights.

### 1. General Legal Framework

Turkey has ratified the regional and international conventions that enshrine freedom of assembly such as the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights. Article 90 of the Constitution recognises the pre-eminence of international ratified treaties over national law.

The right to freedom of peaceful assembly is regulated under the Article 34 of the Constitution as a constitutional right under the title of “Right to Hold Meetings and Demonstration Marches”: *“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission”*.

The constitution recognises the equality between men and women (Article 10). There is no regulation against women’s right to freedom of assembly.

**The Law on Meeting and Demonstration No. 2911** (Hereafter “the Law”, unless otherwise mentioned), defines under its Article 2 **a) Meeting:** “means that (...) meetings that are organised in open and closed places in the framework of this law by real and juridical persons on specific issues to enlighten people and to create public opinion; b) **Demonstrations:** *“demonstrations (marches) that are organised in the framework of this law by real and juridical persons on specific issues to enlighten people and to create public opinion”*.

The Constitution importantly protects “public statements” by stating that *“Everyone has the right to express and spread his/her thoughts and opinions, individually or collectively, with verbal, written, visual or other means”*. However, the Article 26 of the Constitution expresses in its last paragraph, *“The forms, conditions and methods that would be used to express and spread freedom of thought is regulated by law”*. Despite the Article 26 of the Constitution, there is no law or provision with regard to spontaneous assemblies or collective or individual expression of thought. In other words, these rights are regulated by secondary legislative tools which are open to broad interpretation and can be easily violated, whereas if these rights were regulated by law, there can be more guarantees for citizens,

There are several other laws that effect the right to freedom of peaceful assembly: 1) Martial Law No. 2935, 2) Anti-Terror Law No. 3713, 3) The Law on Private Security Services No. 5188, 4) The Law on the Duties and Responsibilities of Police No. 2559, 5) The Law on Associations No. 5253, 6) The Law on Political Parties No. 2820, 7) The law on the Basic Principles of Elections and Electors’ Records No. 298, 8) The law on Province Administration No. 5442, 9) Turkish Penal Code No. 5237 (TPC).

As a result of **ambiguous and wide scope of the definition of terrorism** in the Article 1 of the Anti-Terror Law, thoughts expressed in demonstrations and marches can be deemed as terrorist activities rather than freedom of assembly and expression. In addition, within the framework the Articles 6 and 7 of the Anti-Terror Law those who join demonstrations can be accused of being terrorist or committing terror crimes for their slogans and placards in the demonstrations. As of 30 November 2002, there is no city or region administrated by the Martial Law. However, the Martial Law was suspended but not abolished. So, the Martial Law no 2935 can still provide wide authority to those who are in power to allow or ban any form of assembly.

## 2. Procedures

Freedom of assembly in Turkey is governed by a **declaration** regime. **However, an authorisation is needed for the meetings open to public and in the open air.**

Article 4 of the Law states **exceptions** to the notification procedure. Meetings that are not subject to authorisation, are: indoor meetings; scientific, sportive, trading and economic activities; national or religious days, and traditional activities such as wedding ceremonies.

Article 9 of the Law sets out the declaration procedure. An assembly committee composed of at least 7 people (over 18 years old) must be formed. Although the Article 34 of the Constitution states that *“the formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law”*, the Law actually leaves it to a decree to regulate the authorisation conditions (in article 10). Notifications should be lodged to the governors in provinces and districts, at least 48 hours before the meeting.

As mentioned in the Article 10, *“a receipt should be given in exchange of this notification with the date and time on it”*. If the notification is not taken by the governorate, this is detected in writing and a complaint is issued via public notary and according to the same article *“the time of the complaint is accepted as the time of notification”*.

**Foreigners** must request an authorisation to the Ministry of Interior Affairs to organise meetings, by *“informing the most senior local civil servant of the district where the meeting will be held at least 48 hours prior to the meeting”* (Article 3/2).

There is no provision on **spontaneous assemblies** and undeclared assemblies are banned and give rise to sanctions (see *infra*). In practice, spontaneous assemblies are treated as collective public statements (permitted) or are dispersed as illegal, according to the political assessment of the authorities.

According to Article 18 of the Law, restrictions or ban decisions should be handled to the organising committee at least 24 hours before the meeting.

## 3. Restrictions

The Article 34 of the Constitution declares that *“The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others”*.

These restrictions conform to Article 11/2 of the European Convention on Human Rights and to the International Covenant on Civil and Political Rights. However, the Constitution does not include the safeguard present in international conventions that restrictions can only be taken “as necessary measures in a democratic society”.<sup>1</sup> In fact, the Law on assemblies introduces extensive restrictions.

Article 17 of the Law limits the restrictive measures to “*legitimate aims*” but leaves a large appreciation margin to the administrative authorities and does not foresee as such proportionality. Furthermore, the Law does not oblige the administration to explain and argue what are the necessities of public order, security or prove the imminent danger.

**The Law puts important restrictions on content and messages** that are tolerated in assemblies, in flagrant contradiction with international standards. Indeed, Article 23 on Sanctions (see point 5. below) states that one shall be punished with prison in case of bearing “*symbols of illegal organisations, uniforms with these symbols, chanting illegal slogans, carrying illegal posters, signs, pictures etc.*” The concept of “illegal organisation” may change according to State policies, and that of “illegal slogans” or “illegal pictures” is too broad and vague to be acceptable under international law.<sup>2</sup>

The Law also sets **blanket restrictions on time** (Article 7 “*the meetings should start with the rise of the sun and should be finalised an hour before the set of the sun*”) **and place** (Article 22/1, *meetings cannot be conducted, “in general roads and parks, temples, buildings that provides public services and its premises and in the area surrounding one kilometre of the Grand National Assembly of Turkey”* and demonstrations “*cannot be organised on the intercity roads*”). Local public administration can unilaterally determine the location of a meeting with a large discretionary power, as the organizers do not take part in this determination (Article 6 of the Law). They can also decide on general bans of assemblies in certain places. For example, in April 2013 Istanbul Governorate banned meetings in Taksim Square to prevent Mayday demonstrations in this highly symbolic place.

**Foreigners are restricted from organizing and participating** in assemblies (see above), and have to be authorised the Ministry of Interior Affairs and district authorities.

1 See also Human Rights Council, Resolution 15/21, 15<sup>th</sup> session, 30 September 2010, UN Doc. A/HRC/RES/15/21, OP 4; Human Rights Committee, *Belyazeka v Belarus*, Communication no. 1772/2008, 23 March 2012, para. 11.7; Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 20<sup>th</sup> session, 21 May 2012, A/HRC/20/27, para. 16.

2 On content-based restrictions and the limits of criticism, see European Court of Human Rights, *Incal v Turkey*, judgment of 9 June 1998, para. 54; Second Report of the Special Rapporteur on FPAA, Human Rights Council, 23<sup>rd</sup> session, 24 April 2013, A/HRC/23/39, para. 59; OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 2010, Warsaw, 2<sup>nd</sup> edition, section B (Explanatory notes), paras. 94-97.

Restrictions based on the belonging to one of the above-mentioned groups are clearly defined in the Law, but restrictions on time and place of assemblies are left to the administrative authority (province and district governors).

Finally, **restrictions or ban decisions can be appealed before an administrative court**, and the judiciary should evaluate the situation in 24 hours. However, the judiciary system does not work timely and effectively enough to ensure an effective remedy in these cases, and to enable the assembly to take place on the planned date.

#### 4. Protection

##### *State's positive obligation to protect peaceful assemblies*

The Article 34 of the Constitution as well as the Law define freedom of assembly as a right and Article 29 of the Law states that who restricts this right will be sentenced. However, the Law mainly focuses on restrictions and it is impossible to say that the protection obligations of the State are clearly defined in it.

The organising committee can be held responsible for the peacefulness and order of the assembly, and has to help the law-enforcement identifying the crime and criminals, which amounts to shifting the protecting responsibility from the State to the organisers, in contradiction to international standards and the State's constitutional obligations to protect citizens and to facilitate freedom of assembly.

##### *Use of force*

There are several police laws and circulars that are relevant to the use of force in the context of demonstrations. The general Law No 3201 on Security Affairs, and the more specific Law No 2559 (1934) on Police Attributions and Obligations, amended by law No 5681 of 2007.

The latter authorises the use of weapons against a group that "*resists the police or prevents them to carry out their duty*".

Article 24 of the Law on meetings and demonstration states that a warning will be made and force will be used in case of the participants do not disperse after the warning.

The principles of proportionality and graduation in the use of force are stated in an Order on rapid intervention forces (*Polis Çevik Kuvvet Yönetmeliği*) of December 30, 1982. It establishes strict procedures for the dispersal of demonstrators, such as 3 warnings; the establishment of minutes proving the warnings were heard from the furthest point in the crowd; and the gradual use of physical force, material force and weapons.

A Circular was issued on February 15, 2008 to regulate the conditions of use of tear gas. It also puts strict conditions on its use, such as the presence of medical staff, warnings before use, gradual and proportionate increase, the clearing of exits for the crowd to disperse, the prohibition of direct firing at people in all cases, and the prohibition of suing gas against people who have stopped resisting or attacking.

However, due to the vague provisions of the Law on Security Affairs, law-enforcement officers enjoy an extraordinary large decision margin for the forceful dispersal of assemblies. Numerous judgements of the European Court of Human Rights have shed light on violations and have recommended that the law should regulate the use of force more strictly and not leave it to the arbitrary decision of civil servants.<sup>3</sup>

### ***Accountability and remedies***

It is possible to refer to administrative courts to lodge an official complaint in case of State's failure to comply with its protection obligation. However it is doubtful whether they are an effective remedy as foreseen in Article 13 of the European Convention on Human Rights.<sup>4</sup> Indeed, according to statistics of the European Court of Human Rights (ECtHR), between 1995 and 2011, 87.5% of ECtHR judgements on Turkey reveal that there has been a violation, while the Turkish courts had not judged so.

Law-enforcement officials are theoretically accountable for excessive use of force and human rights violations. However, according to Article 129 of the Constitution, an authorisation is compulsory to investigate public officials. The "Law on the Trial of Officers and Other Public Officials No. 4483" reiterates this authorisation system.<sup>5</sup>

In 2012, a national Ombudsman institution was created, and it can receive individual complaints against civil servants. Its independence and effectiveness as an effective remedy is still to be demonstrated in practice.

Since 2012 the possibility to lodge individual complaints to the Constitutional Court was also opened. This court can be referred to once all other domestic mechanisms have been exhausted. Although this could be a positive step in the access to effective remedy, as the independence of this court has not been proven, it is worrisome that one more domestic step has been added, delaying possible recourse to the European Court of Human Rights.

<sup>3</sup> *Abdullah Yasa and others v. Turkey; Oya Ataman v. Turkey; Ali Güneş v. Turkey; DISK and KESK v. Turkey.*

<sup>4</sup> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." <http://www.hri.org/docs/ECHR50.html>.

<sup>5</sup> See for example the case on the murder of Hrant Dink and its investigation phase. Cases against 40 public officials (army and police officers) were obstructed with authorisation procedures. ECtHR *Dink vs. Turkey* (Application no, 2668/07, 6102/08, 30079/08, 7072/09 et 7124/09) decision, (14 September 2010).



Finally, a draft law is currently under discussion to direct individual complaints against police officers directly to inspectors of the Ministry of the Interior, which would undermine the principle of a recourse to an independent and impartial tribunal.

## 5. Sanctions

Article 23 of the Law enumerates the numerous grounds for sanctions : a) **Holding an assembly without notification**, or holding it before or after the notified date and time; b) Bearing any kind of firearms, explosives, cutting and perforating tools, stones, sticks, poisons, gas or fog materials, as well as symbols of illegal organisations, uniforms with these symbols, covering faces to prevent identification, **chanting illegal slogans, carrying illegal posters, pictures** etc.; c) Holding an assembly outside of the timing restrictions foreseen in art. 7 or d) Outside the places mentioned in Articles 6 and 10 [i.e. the places that are determined by the administration]; e) Noncompliance to the methods and conditions mentioned in Article 20 and to the prohibitions and measures mentioned in Article 22 [see the paragraph on the article]; f) **Transgressing its own aims**, rules and limits defining meetings that are not required authorization according to Article 4; g) Gatherings aiming at committing a crime defined by law; h) Transgressing the aim mentioned in the notification; i) Holding an assembly before the end of the postponing or banning period; j) Maintaining the Assembly after the government's commissariat finalised it; k) The meetings that do not comply with the Paragraph 2 of Article 3 (about Foreigners) will be considered as illegal.

Article 28 of the Law provides several sanctions such as, a) 18 months to 3 years of imprisonment for those organise and lead illegal meetings; b) Up to 12 months of imprisonment for who do not conform to specific requirements yet organise meetings, and for the members of the organising committee who do not have the necessary conditions (juridical capacity and at least 18 year-old); c) 6 months to 2 years of imprisonment for the members of the organising committee who were not present during the meeting and who fail to perform their duties; d) Two to five years of imprisonment who uses violence against law-enforcement and government's commissariat.

Whereas participants are held responsible individually, organisers, as a committee, face collective responsibility according to the Article 28. Indeed organisers face special civil liability (For example to pay for cleaning, security...) and criminal responsibility (for example, in case of violence, material damage...).

These heavy sanctions and the extra liability for organisers are a strong deterrent to exercise the right to assemble and can amount to a limitation to the right to assembly.

The sanctions are detailed in the Law and mentioned above but the laws in general (and specifically the Law No. 2911) have problems in terms of transparency, predictability, clarity and the rule of law principles.

**Penal courts** of first instance examine the cases of individuals that allegedly violated the Law, while administrative courts examine the practices of governorates (province and district) when implementing the Law.

Judicial review is possible to appeal verdicts of first degree courts: in the State Council to appeal administrative courts verdicts, and before the Supreme Court of Appeal for penal courts.

However, there are serious concerns over the independence and impartiality of courts in Turkey, in particular the right to a fair trial, including transparency and access to the judicial procedure and charges, and the respect of equality of arms between accusation and defence.

## Recommendations

1. Freedom of assembly should be regulated only with first degree law. The decree of the Ministry of Interior Affairs should be repealed;
2. Article 3 of the Law should be reformulated and underline that the right to hold meetings and demonstrations is a right that everyone can enjoy equally without discrimination or restriction; Article 6 should be changed to guarantee that meetings and demonstrations can be held everywhere and to abolish sweeping time limitations;
3. Article 9 should guarantee that individuals or any form of organisation can organize meetings and should not require an “organising committee”;
4. Notification procedures should be shortened, ideally up to 24 hours before the planned meeting or demonstration;
5. Governors or district governors should accept all notifications, and take restrictions according to the specific circumstances only when there is strong evidence of imminent risk for public order and safety. These limits and the obligation of authorities to demonstrate the risk before restricting freedom of assembly should be clearly stated in the law. Decisions to restrict (postpone, displace) or ban should be argued and notified in writing;
6. Spontaneous demonstrations should not be considered as illegal and should be tolerated as long as they remain peaceful;
7. An effective mechanism to appeal any decision banning or imposing restrictions on an assembly should be guaranteed by creating a specific rapid mechanism in administrative courts;
8. The use of force should be more strictly regulated, in conformity with the recommendations of the European Court of Human Rights, and the margin of decision of law-enforcement agents in the policing of assemblies should be reduced;
9. An independent police complaints mechanism should be created to guarantee an effective remedy to victims of excessive use of force and human rights violations;
10. The sanctions foreseen in the law should be reduce, in particular excluding criminal and freedom-depriving sanctions, and eliminating the organizers’ criminal responsibility regarding possible breaches of peace and order and possible damages, and limit their civil liability regarding cleaning and security, in order to promote freedom of assembly.