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Freedom through Association



2011

Freedom of Association
of Groups defending **Minority Rights** in **Turkey**

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After Turkey was recognised as a candidate to membership in the European Union in 2004, the efforts made by human rights organisations to promote and protect human rights and freedoms have achieved significant progress in the past several years.

The law on associations, part of the reforms that have been adopted, now allows associations to seek funding abroad without restrictions, to establish federations, to cooperate with international organisations, to promote minority cultures and use languages other than Turkish in non-official activities, etc. These changes have allowed many minority rights groups to establish associations that have played a key role in protecting minority rights.

Despite this, there are still a number of measures that have yet to be implemented in order to meet international standards fully. Some legislative provisions and the practices of law enforcement authorities show that associations are still seen as entities that could potentially threaten the unity of the state and thus require close monitoring. Associations dealing with minority rights or active in politically sensitive areas remain under constant surveillance. In addition, some association members have been arrested and detained in recent years, especially under the anti-terrorism legislation, and there have been instances in which LGBTTT rights organisations have been forcibly disbanded.

Thus, while the situation of minority rights organisations has improved considerably over the past 10 years, there is an urgent need to take steps to institutionalise recent legislative reforms. In particular, there is a need to ensure that state bodies responsible for law enforcement – not only the police but also prosecutors, judges, state officials, etc. – apply the new legal provisions in a way that will protect and promote rights and freedoms. The ‘democratic opening’ announced by the government in 2009 as well as the new constitution that could be adopted in the wake of the June 2011 elections could play a crucial role in determining how the state considers rights and freedoms. These developments provide a unique opportunity for the authorities to show that they are ready to combat all forms of discrimination and to implement positive measures aimed at guaranteeing the rights and freedoms of all without distinction.

Methodological Note

This study on the right to Freedom of Association of groups defending (ethnic, linguistic, cultural, religious, sexual...) minorities in Turkey was carried out in the context of the Euro-Mediterranean Human Rights Network (EMHRN)'s program on Freedom of Association.

This program aims at monitoring progress and setbacks of Freedom of Association in law and in practice in North and South Mediterranean countries.¹ This is done by drafting an annual reviews serving as a basis for advocacy initiatives throughout the region. The program also engages in solidarity actions in favour of organisations and their members who are exposed to different types of pressure. The annual review of the situation of Freedom of Association in the Euro-Mediterranean region is this year complemented with a new instrument: two reports on issues pertaining to free association in two countries of the Euro-Mediterranean region. This report on the freedom of association of associations defending minority rights in Turkey is the first of these reports.²

This report was written by an independent researcher, Nurcan Kaya, enriched by comments from the EMHRN Working Group on freedom of association, composed of representatives of 15 member organisations of the Network³, and the 80 EMHRN member organisations active in Northern and Southern countries of the Mediterranean.

The analysis is based on desk studies and an information-gathering mission in Turkey. The researcher conducted interviews and collected testimonies from representatives of international organisations and non-governmental organisations (NGOs) defending minority rights. The EMHRN would like to thank all persons, members and non-members of the EMHRN, who have participated in the production of this report.

1 See the EMHRN website <http://en.euromedrights.org/>

2 The second EMHRN country-report deals with the right to freedom of association and assembly in Algeria since the lifting of the state of emergency.

3 The 15 organisations are: the Collectif des Familles de disparu(e)s en Algérie, Algeria; the Danish Institute for Human Rights, Denmark; the Cairo Institute for Human Rights Studies (CIHRS), Egypt; the Ligue des droits de l'Homme (LDH), France; Intercenter, Italy; the Sisterhood Is Global Institute, Jordan; the Mouawad Foundation, Lebanon; Solida, Lebanon; the Association Marocaine des Droits Humains (AMDH), Morocco; the Organisation Marocaine pour les Droits de l'Homme (OMDH), Morocco; the World Organisation against Torture (OMCT), Switzerland; Committees for the Defense of Democratic Freedoms and Human Rights (CDF), Syria; the Comité National pour les Libertés en Tunisie (CNLT), Tunisia; the Ligue Tunisienne pour les Droits de l'Homme (LTDH), Tunisia; the Human Rights Association (IHD), Turkey.

DGF	Directorate General of Foundations
DTK	Democratic Society Congress
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Eğitim-Sen	Trade Union of Education and Science Labourers
EU	European Union
EMHRN	Euro-Mediterranean Human Rights Network
FCNM	Framework Convention for the Protection of National Minorities
Göç-Der	Association for Immigrants, Social Assistance and Culture
HCA	Helsinki Citizens Assembly
ICCPR	International Covenant on Civil and Political Rights
IHD	Human Rights Association
KCK	Kurdish Communities Union
Kurd-Der	The Kurdish, Democracy, Culture and Solidarity Association
LGBTT	Lesbian, gay, bisexual, transvestites and transgenders
NGO	Non governmental organisation
PKK	Kurdistan Workers Party
UDHR	Universal Declaration of Human Rights
UN	United Nations



6

INTRODUCTION



Freedom of association is one of the basic freedoms protected by international human rights law. Several international and regional treaties protecting civil and political rights guarantee this right. Moreover, instruments specifically designed for protection of minority rights guarantee freedom of association to people belonging to minorities. Establishing and managing associations are inherent elements of the right to freedom of association; such elements are vital for minorities and disadvantaged groups to defend the rights of their communities and promote their culture.

Freedom of association is protected by many international human rights treaties ratified by Turkey. It is also guaranteed by the Turkish Constitution as well as relevant domestic legislation. Consistently with international standards, this freedom can be restricted according to criteria laid down by Turkish law. However, in practice, this right can still be restricted, sometimes in violation of international standards. Turkey's policy of resistance against legal recognition of some minorities and their rights negatively affects the exercise of this freedom by Turkish minorities. Millions of members of religious and linguistic minorities are not recognised in Turkey and until 2004, they were not entitled to set up associations to promote their culture or advocate for their rights.

The long and extensive efforts of human rights organisations calling for the implementation of human rights reforms in Turkey, as well as the recognition of Turkey as a candidate state for membership of the European Union (EU), have opened a new era in relation to the protection of human rights and freedoms. The Copenhagen Criteria adopted by the European Council in 1993 addresses the measures that candidate states must take before joining the EU. According to this document, candidate countries are expected to have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.¹ In order to fulfil this requirement, Turkey has adopted several reform packages to bring human rights standards in Turkey in line with European standards. Freedom of association has been one of the basic freedoms that has developed and progressed gradually in Turkey. This has included: changes in the Law on Associations; the removal of the ban on promoting minority cultures and use of languages other than Turkish in non official activities; measures enabling fundraising from abroad; measures to enable the forming of federations; and measures enabling cooperating with international organisations. All of these measures are vital developments in promoting and protecting freedom of association. These changes have

1 European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency. Criteria 7/A/iii,

enabled minority groups, including groups defending the rights of lesbian, gay, bisexual, transvestites and transgenders (LGBTTs) to establish associations; these associations have begun to play an important role in raising awareness of the problems of minorities and have become a tool for advocating for their rights and for the protection of minority cultures.

Relations between civil society organisations and the Turkish authorities have improved and positive developments in the field of freedom of expression have opened more space for associations to act in the public sphere.

However, more remains to be done in order to meet international human rights standards. A number of provisions in the law and the implementation of the law shows that associations are still seen as potential risks against the unity of the state; the authorities still perceive a need to keep associations under control to prevent separatist activities and in order to protect of 'public morals'. The Desks of Associations, the authorities dealing with associations, act as control mechanisms rather than regulatory bodies. Associations that carry out activities relating to minorities and to politically sensitive subjects in particular, are kept under state surveillance. The authority responsible for visiting and checking the files of associations is used extensively. Associations are obliged to give prior notification to the authorities about receiving grant from abroad; this obligation is in practice, used as one of the control tools. A vital problem is that restrictions in law are still interpreted widely. Interpretation of law may differ from one public body or court to the other. There is no consistency between the

decisions of different authorities and courts, raising concerns about the impartiality of the judiciary and are concerned about the stability of reforms. There is no comprehensive anti-discrimination law or any other law that would guarantee equal treatment of associations established by or advocating for the rights of minorities. There is likewise no effective legal or administrative remedy in cases of discriminatory treatment.

A number of important issues of concern include: legal action aimed at closure of LGBTT rights organisations; narrow interpretation of constitutional provisions in order to limit the aims of associations; burdensome bureaucratic requirements for the establishment and management of associations; detention and jail of members of some associations under anti-terror provisions; problems with registering foundations whose aims include the provision of support to a specific ethnic group or community (including a specific minority community); property problems of non-Muslim foundations; excessive use of police violence during public demonstrations and inappropriate use of anti-terror provisions to charge participants.

The "democratic opening", launched by the government in 2009, promised equal treatment of all citizens. However the government failed to take any concrete measures to this end. The Government's promise for an entirely new Constitution raised hopes of the society, yet work on this has been postponed to the 2011 post-election period.

The main focus of this report is the right to establish an association defending minority

rights and protect the work of associations defending minority rights. However, due to the problems encountered by minority foundations, the report addresses their problem briefly. The report also covers freedom of assembly, in particular its relation to Kurdish issues or those organisations situated in southeast Turkey.

This report shows how freedom of association of groups defending minority rights has developed in Turkey in recent years, while analysing the changes in law and implementation. Interviews with members of some minority rights and human rights associations were conducted in order to address the implementation of law and current problems. The report concludes with recommendations to the government of Turkey and to the EU with the hope of contributing to protection of freedom of association and right of minorities in Turkey according to international standards.

A. International standards on the right to freedom of association

Definition of Freedom of Association

The right to Freedom of association is one of the fundamental rights protected by international human rights law.

Several international and regional, binding and non-binding instruments guarantee this freedom. The Universal Declaration of Human Rights (UDHR)², International Covenant on Civil and Political Rights

2 Adopted on 10 December 1948. Article 20/1 reads as follows: '1) Everyone has the right to freedom of peaceful assembly and association'.

(ICCPR)³ and the European Convention on Human Rights (ECHR)⁴ protect the right to freedom of association of all. In its judgment *Gorzelik and others v Poland*, the European Court of Human Rights (ECtHR) stressed the importance of freedom of association and the role it plays in society in the following way: "Indeed, the state of democracy in the country concerned can be gauged by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice. In its case-law, the Court has on numerous occasions affirmed the direct relationship between democracy, pluralism and freedom of association..."⁵ This freedom is closely linked to the exercise of the right to freedom of expression. The ECtHR has referred to this relationship in its case law, stating that freedom to express opinions is one of the objectives of the right to freedom of association enshrined in Article 11.⁶ Freedom of association is one of main means of defending human rights and therefore is covered by the Declaration on the Rights

3 Adopted on 16 December 1966; entry into force on 23 March 1976; ratified by Turkey on 23 September 2003. Article 22/1 reads as follows: '1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.'

4 Adopted on 4 November 1950; entry into force on 3 September 1953; ratified by Turkey on 18 May 1954. Article 11/1 reads as follows: '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests'..

5 European Court of Human Rights, *Gorzelik and Others v. Poland*, Application no. 44158/98, judgment of 17 February 2004, para 88.

6 European Court of Human Rights, *Refah Partisi and Others v. Turkey*, Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003. Para. 88.

of Human Rights Defenders.⁷ In the report submitted to the UN General Assembly in 2009, the Special Rapporteur on the Situation of Human Rights Defenders, described freedom of association as both a civil and political right in the following way: “As a civil right it grants protection against arbitrary interference by the State or private agents, when, for whatever reason and whatever purpose, an individual wishes to associate with others, or has already done so. As a political right it is indispensable for the existence and functioning of democracy, since political interests can be effectively championed only in community with others.”⁸

The Freedom of Association Working Group of the Euro-Mediterranean Human Rights Network (EMHRN) describes the scope of this freedom by the following words:

“... freedom of association relates to different stages of the life of an organisation or an association: the ability of the organisation to operate without interference, including the freedom of its members from arbitrary interference and threat to their rights; the ability of the organisation to raise funds to enable it function; and freedom from arbitrary dissolution or other such interference of the

work of the organisation.”⁹ Even though an institutional structure is required, legal personality is not necessary. De facto associations are protected by international law and are regarded as being equal to those that have legal personality.¹⁰

Freedom of association is not an absolute right; it can therefore be restricted in certain circumstances. International and regional treaties that guarantee this freedom include criteria for the limitation of this freedom. According to these, any interference with the right to freedom of association must be prescribed by law, must have a legitimate aim and be necessary in a democratic society. ‘Prescribed by law’ requires the limitation to be articulated in a clear, understandable and accessible law. The legitimate aims are listed as protection of national security or public safety, public order; prevention of disorder or crime; the protection of public health or morals or the protection of the rights and freedoms of others.¹¹ The criterion ‘to be necessary in a democratic society’ requires the state to show that the limitation of this freedom met a “pressing social need” and was proportionate to the aim pursued. The ECtHR has stated that “...only convincing and compelling reasons can justify restrictions on that freedom.”¹²

7 The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (resolution 53/144, annex).. Article 5 reads as follows: ‘For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: [...] (b) to form, join and participate in non-governmental organizations, associations or groups’.

8 Report to the General Assembly of the Special Rapporteur on the situation of human rights defenders, A/64/226, 4 August 2009, para 12.

9 EMHRN 2010 Freedom of Association Report in the Euro-Mediterranean Region, page. 5.

10 Ibid, para 21.

11 Article 22/2 of the ICCPR and Article 11/2 of the ECHR.

12 European Court of Human Rights, *Gorzelik and Others v. Poland*, Application no. 44158/98, judgment of 17 February 2004, para.88

Definition of 'minority' under international human rights law

There is no official definition of minority under international law, as none of international or regional treaties define the term. However it is widely accepted that a group that has a distinct ethnic, linguistic or religious identity and wants to preserve this identity, is usually numerically smaller than the rest of the society, and forms a non dominant group in society, can be identified as minority.¹³ It is not up to any state to dictate whether a group can be defined as minority or not. According to the UN Human Rights Committee, whether a group is a minority or not is determined based on objective criteria.¹⁴ Additionally, nowadays it is accepted that minority members do not need to be citizens of the State.

Minorities and freedom of association

When it comes to minorities and freedom of association, the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM)¹⁵ and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious

13 Henrard, K. *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*, The Hague, Kluwer, 2000, p.48.

14 General Comment No. 23: The rights of minorities (Art. 27) : . 08.04.1994. CCPR/C/21/Rev.1/Add.5, General Comment No. 23. (General Comments). Paragraph 5.2

15 Adopted on 1 February 1995; came into force on 1 February 1998. Turkey is not party to the Convention. Article 7.

and Linguistic Minorities¹⁶ protect minorities' freedom of association in general and the right to establish and maintain their own associations. Minority rights are not expressly protected by the ECHR. However, in its judgment *Gorzelik and others v Poland*, the ECtHR highlighted the role and importance of associations, including "those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting minority consciousness" in the proper functioning of democracy.¹⁷ The Court also stressed that "freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities".¹⁸

B. Freedom of Association and Minorities in Turkey

Recognition of minorities in Turkey

The Constitution of Turkey does not refer to minorities or their rights and there is no specific legislation that defines minorities and protects their rights. The only instrument that Turkey takes as reference in regards to minorities is the Treaty of Lausanne, a peace treaty signed in 1923 between Turkey and the Allied Forces of the First World War.¹⁹ Section III of the Treaty includes provisions on the protection of non-Muslim minorities,

16 Adopted by General Assembly resolution 47/135 of 18 December 1992. Article 4.

17 European Court of Human Rights, *Gorzelik and Others v. Poland*, Application no. 44158/98, judgment of 17 February 2004, para. 92.

18 *Ibid.* Para. 93.

19 The full text of the Treaty of Lausanne is accessible at http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

and Article 39 guarantees some language rights to all citizens of Turkey. Although the Treaty does not specify any religious or ethnic group, Turkey has de facto recognised only three non-Muslim groups, namely, Armenians, Greeks and Jews (Lausanne minorities), as minorities and has guaranteed them the rights specified in the Treaty of Lausanne. Turkey has been violating the Treaty of Lausanne by limiting the guarantees provided by the Treaty to these three non-Muslim groups. Furthermore, in practice, even the three recognised groups have not been able to exercise fully the rights protected by the Treaty. The Lausanne Treaty does not meet today's international standards as it does not refer to ethnic minorities, and some rights and freedoms, inter alia the right to use minority languages in accessing public services, and in relation to the state responsibility to take positive measures to ensure equality.

Limiting recognition of minorities to three groups has left many other non-Muslim minorities, such as Assyrians, Protestants, Keldanis, Yezidis and Alevis, as well as ethnic groups, including Kurds, Caucasians (Circassians), Laz and Roma, without minority rights protection.²⁰ Non recognition of distinct identity of these groups has prevented them from exercising a number of rights throughout the Republican history and has resulted in inequality even among minority groups. For example while Armenians, Greeks and Jews have been guaranteed the right to establish and manage educational institutions where they can use their languages as the language of

²⁰ For more information on Turkey's policy on minorities see Oran, B., *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama*, TESEV, June 2004.

instruction, other non-Muslim religious groups, such as Assyrians and ethnic groups, such as Kurds and Circassians have been denied this right. Turkey's policy of not acknowledging the existence of several minorities has been criticised by a number of non governmental organisations (NGOs)²¹ as well as international human rights bodies.²²

Turkey applies this policy even today both in national and foreign policy. Turkey has submitted and maintains reservations when ratifying or acceding international treaties that cover minority or cultural rights, to limit the exercise of these rights to the three recognised minority groups. Examples of this policy are the reservations to the Convention on the Rights of Child, the First Protocol to the ECHR, the ICCPR and International Covenant on Economic Social and Cultural Rights (ICESCR).²³ The legitimacy of these reservations is questionable, since, according to the UN Vienna Convention on the

²¹ Written Comments by Minority Rights Group International Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at its 74th Session, pp. 8-9.

²² Concluding Observations of the Committee on the Elimination of Racial Discrimination, Turkey. CERD/C/TUR/CO/3. Adopted on 24 March 2009. Paragraph 12. See also the European Commission against Racism and Intolerance report on Turkey, CRI(2011)5, published on 8 February 2011. Paragraph 9.

²³ Turkey has entered the following reservation to the ICCPR: 'Turkey has the following reservation to the ICCPR: The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.'

Law of Treaties²⁴, any reservation must be compatible with the object and the purpose of the treaty.²⁵ When it comes to ratification of treaties, despite criticism from the European Commission²⁶ and Council of Europe bodies²⁷, Turkey has not ratified the Framework Convention for the Protection of National Minorities, the UNESCO Convention against Discrimination in Education, or the European Charter for Regional or Minority Languages and Protocol No.12 to the ECHR.

In Turkey, there is no governmental or parliamentary body to ensure dialogue with minorities while developing policies affecting and/or improving their situation. Therefore, associations become the means of protecting and developing minority culture; they advocate for the rights of minorities and develop dialogue with government, public bodies and other sections of the society. Many existing minority NGOs are trying to play this role and represent their communities. Hosrof Köletavitoğlu, President of the Malatya Philanthropist Armenians Culture and Solidarity Association established

24 Adopted on 23 May 1969, entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. The full text of the Treaty can be viewed at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

25 Adopted 23 May 1969, entry into force 27 January 1980. URL: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, accessed 02 March 2011. Article 19.

26 European Commission's 2010 Progress Report on Turkey, Page 32.

27 See European Commission against Racism and Intolerance report on Turkey, CRI(2011)5, published on 8 February 2011. Paragraphs 6-7, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, paragraph no.1

in August 2010, states that there is an effort within the Armenian community to become more organised and represent itself in different levels. According to him, associations play a unique role in doing so.²⁸ Elmas Arus, President of the Zero Discrimination Association, an NGO that is currently focusing on discrimination against Roma, states that Roma are seeking remedies to their problems through associations. She states that nobody would listen to individual Romas, but they do listen to Roma associations. She believes that thanks to associations, there is more awareness of the problems of Roma in Turkey. She also asserts that associations might have played a role in the start of the democratic opening.²⁹

Establishing associations for promotion of minority cultures and languages, and for advocating for the rights of minorities plays a vital role in the contemporary world. Yet there is currently no Turkish public body to carry out research and implement projects on protection and promotion of minority languages and culture; no public course to teach minority languages. Minority languages cannot be taught at any school and except Lausanne minority schools, and no school can use minority languages as the language of instruction. Therefore, some NGOs established by minorities try to play a role in preserving their culture and language.

28 Interview with Hosrof Köletavitoğlu, President of the Malatya Philanthropist Armenians Culture and Solidarity Association, Istanbul, 08 March 2011.

29 Interview with Elmas Arus, President of the Zero Discrimination Association, Istanbul, 05 March 2011.

Minorities in Turkey according to international standards

- Religious minorities

There is no ethnic data collection in Turkey; there is accordingly no official data on the population of minority groups. The national census conducted in 1965 included a question on mother tongue of citizens; however since then no such question has been asked. Figures given below are estimated numbers, mostly provided by representatives of minority organisations.

Alevis are the largest religious minority group in Turkey. Their religious belief and practices are significantly different from Sunni-Muslims. Their population is estimated to be between 12-20 million.³⁰ They live all over Turkey and they are ethnically diverse.

Armenians Their population is estimated to be between 50.000 and 60.000.³¹ Armenians are one of the native people of Anatolia. The majority of them are Orthodox while some are Protestant and some are Catholic. It is estimated that there are between 10.000 and 20.000 Armenian citizens living in Turkey. Almost all of them are based in Istanbul.

Jews are estimated to number 25.000.³² Most of them live in Istanbul.

30 Interview with Kazım Genç, Attorney, former General Secretary of the Alevi Bektaşî Federation, Ankara, 25 February 2011.

31 Interview with Hosrof Köletavitoğlu, President of the Malatya Philanthropist Armenians Culture and Solidarity Association, Istanbul, 08 March 2011.

32 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, paragraph no.15.

Assyrians are one of the native people of Anatolia. They are Aramaic speaking Orthodox Christians. Their population in Turkey is estimated to be between 15.000-20.000. Around 10.000 of them live in Istanbul while the remaining number live in Mardin/Midyat and Diyarbakır.³³

The population of **Protestant Christians** is estimated to be between 3000-4000.³⁴

Rum Orthodox Christians are estimated to number between 2500 and 3000 only, although they are one of the native people of Anatolia. They speak Greek.³⁵

- Ethnic minorities

Kurds are the largest ethnic minority in Turkey. Their population is estimated to be between 12 and 15 million.³⁶ Most of them are Sunni-Muslims, while some are Alevis. They are historically based in eastern and south-eastern Anatolia. However, due to forced immigration, internal displacement and economic migration, they live in cities such as Istanbul, Ankara, Izmir. They also live

33 Interview with Turgut Alaca, President of Mesopotamia Culture and Solidarity Association, Istanbul, 10 March 2011.

34 Phone interview with Umut Şahin, General Secretary of Association of Protestant Churches, 15 August 2011. The population of Protestants in Turkey reaches 5000 including non Turkish citizens.. See, Kaya, Nurcan, Turkey, in State of the World Minorities and Indigenous Peoples 2010, Minority Rights Group. p. 177.

35 Phone interview with Dimitri Frangopulo, 07 May 2011.

36 Council of Europe Parliamentary Assembly Report, The cultural situation of the Kurds, 07 July 2006, paragraph 68. Accessed at <http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc06/EDOC11006.htm> on 14 February 2011.

in other provinces in central, southern and western Turkey. They have many associations to promote Kurdish language and culture.

Caucasians (usually called as Circassians in Turkey) are composed of various ethnic/linguistic groups of Caucasian origin. Their population is estimated to be between 3 and 6 million.³⁷

Laz are one of the native people of the eastern Black Sea region. They currently live in Pazar, Ardeşen, Fındıklı, Arhavi, Hopa and Borçka, as well as the Marmara region and other parts of Turkey. Their population is estimated to be around 1,5 million. They speak Lazuri a south Caucasian language, from the same family as Mingrelian, Georgian and Svan language.³⁸

Roma are one of the large ethnic groups in Turkey. Their population is estimated to be around 2.750.000.³⁹

- Sexual minorities

There are six officially established NGOs defending the rights of LGBTTs in Turkey.⁴⁰

37 Interview with Cumhuriyet Bal, General Coordinator of the Federation of Caucasian Associations, Ankara, 26 February 2011.

38 Phone interview with Mehmedali Barış Beşli, President of Laz Culture Association, 04 May 2011

39 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, p. 3.

40 Phone interview with Umut Güner, member of KAOS-GL, 04 May 2011.

The Right to Freedom of Association under domestic law

Freedom of association is defined by the Constitution of Turkey and national law. Chapter Two of the Constitution entitled 'Rights and Duties of the Individual', guarantees freedom of association⁴¹, the right to hold meetings and demonstration marches⁴², and the right to freedom of expression and dissemination of thought⁴³ as fundamental rights. Similar to national legislation, the Constitution includes detailed paragraphs on restriction of these rights. The Constitution does not refer to minorities, including their right to freedom of association. Protection of minorities' right to freedom of association is covered by Article 10 which guarantees equality before law to everybody irrespective of their language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. The Constitution does not prohibit discrimination based on ethnic origin or sexual identity. Despite the open-ended list of grounds in Article 10, courts have not so far considered ethnic origin or sexual identity as a ground of discrimination. Article 90 of the Constitution provides that international treaties ratified by Turkey are superior to domestic legislation. This means that in cases of inconsistency between the two, provisions of international treaties shall be applied.

41 Article 33. For full text of the Constitution visit <http://www.byegm.gov.tr/sayfa.aspx?Id=78>

42 Article 34.

43 Article 26.

The Turkish Civil Law⁴⁴, the Law on Associations⁴⁵ and the Law on Foundations⁴⁶ are the main codes on freedom of association in Turkey. The Law on Meeting and Demonstration Marches⁴⁷ regulates freedom of assembly.

Article 40 of the Treaty of Lausanne guarantees equal treatment to Turkish nationals belonging to non-Muslim minorities with other Turkish nationals, and the right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein. Despite this provision in Lausanne, foundations belonging to non-Muslim minorities have been discriminated in relation to acquiring and maintaining property, as well as overall management of the foundations.

There is no comprehensive anti-discrimination law that defines and prohibits discrimination in all areas of life, including in the exercise of the right to freedom of association. NGOs have difficulty with becoming third party intervenors in litigation related to their area of work. There is no effective administrative and legal mechanism or an equality body to which victims of discrimination can turn to seek remedies for discrimination. The lack of legal remedies in respect of discrimination in

Turkey has been addressed lately by a number of international bodies in their monitoring reports on Turkey. Both the Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations on Turkey,⁴⁸ and its, the European Commission against Racism and Intolerance (ECRI)⁴⁹ in its 4th periodic report on Turkey, recommended Turkey to adopt a comprehensive anti-discrimination legislation.

Despite the provision in the Constitution, freedom of association has been one of the freedoms that have been seriously violated in Turkey. The Law on Associations that was adopted in 1983 three years after the military coup took place in Turkey, included extensive limitations on the exercise of this freedom.⁵⁰ The overall picture of the Law on Associations and its implementation showed that associations, and in particular those defending minorities, were seen by national authorities as a potential danger to the unity of the state. The Law imposed restrictions on persons that were entitled to set up associations⁵¹ and included a long list of prohibited associations in its Article 5: for example those aiming to destroy territorial and national indivisible unity of the state; associations carrying out activities against national sovereignty, national security, public order, public benefit, general morals and health; those carrying out activities on behalf of or on the basis of regional, racial,

44 Law no 4721, adopted on 22 November 2001.

45 Law no 5253, adopted on 4 November 2004, Official Gazette no: 25649, date 23 November 2004.

46 Law no 5737, adopted on 20 February 2008.

47 Law no 2911, adopted on 6 October 1983, Official Gazette no. 18185, date 8 October 1983.

48 Concluding Observations of the Committee on the Elimination of Racial Discrimination, Turkey. CERD/C/TUR/CO/3. Adopted on 24 March 2009. Paragraph 17.

49 ECRI Report on Turkey, published on 8 February 2011, paragraph 36.

50 Law no 2908, published in Official Gazette no: 18184, date 07 October 1983.

51 Article 4 of the Law no 2908.

social, religious grounds; those claiming the existence of racial, religious, cultural, or linguistic minorities, or those creating minorities by protecting, promoting and disseminating languages and cultures other than Turkish ones.⁵² Associations could not carry out activities at an international level or join associations established abroad. Likewise, foreign associations could not set up branches in Turkey⁵³.

State policy for banning advocacy for minority rights and cultures appeared throughout legislation on freedom of association and freedom of expression adopted in the post military coup period. The Law on Political Parties for example, which was adopted the same year⁵⁴ included similar limitations on the aims of political parties. Some of these, for example the prohibition of 'alleging the existence of minorities on the basis of national or religious culture or sect or race or language on the territory of the Republic of Turkey' and the promotion of languages and cultures other than Turkish ones, are still in force.⁵⁵ Many political parties have been closed down by the Constitutional Court of Turkey for violating these provisions, by referring to certain ethnic groups in Turkey as a 'nation' or a 'minority', and claiming cultural and political rights for them. The European Court of Human Rights found violations of Article 11 of the European Convention on Human Rights guaranteeing freedom of association and peaceful assembly,

in many cases brought in relation to these political parties.⁵⁶

Extensive limitations on the rights of Turkish associations lasted until early 2000s. Since Turkey became a candidate state to join the EU in 1999, it has adopted several reform packages. Those adopted between 2001 and 2004 in particular, improved freedom of association along with other rights and freedoms⁵⁷. The new Law on Associations adopted in 2004 removed provisions clearly violating freedom of association.⁵⁸ Thanks to these changes, associations can carry out activities at the international level, establish representation offices, branches, associations or umbrella organisations abroad, join an association or institution based abroad⁵⁹, and obtain funding from individuals or organisations based abroad. Likewise, foreign associations can set up representation offices, branches, associations or umbrella organisations, or join an association or umbrella organisation in Turkey, subject to the opinion of Ministry of Foreign Affairs and permission of the Ministry of Interior⁶⁰.

The new Law eased the establishment of associations by minorities, and enabled

52 Article 5 of the Law no 2908.

53 Article 7 of the Law no 2908.

54 Law no 2820, published in Official Gazette no 18027, date 22 April 1983.

55 Article 81, titled 'Preventing Creation of Minorities, of the Law no 2820.

56 See among others *Emek Partisi and Şenol v. Turkey*, Application no. 39434/98, judgment of 31 May 2005; *United Communist Party of Turkey v. Turkey*, Application no. 133/1996/752/951, judgment of 30 January 1998; *Freedom and Democracy Party (ÖZDEP) v. Turkey*, Application no. 23885/94, judgment of 8 December 1999.

57 See for example Law no 4771, adopted on 3 August 2002, Official Gazette no: 24841, date 9 August 2002 that changed many provisions in the Law on Associations and the Law on Foundations.

58 Law no 5253, adopted on 4 November 2004, Official Gazette no: 25649, date 23 November 2004.

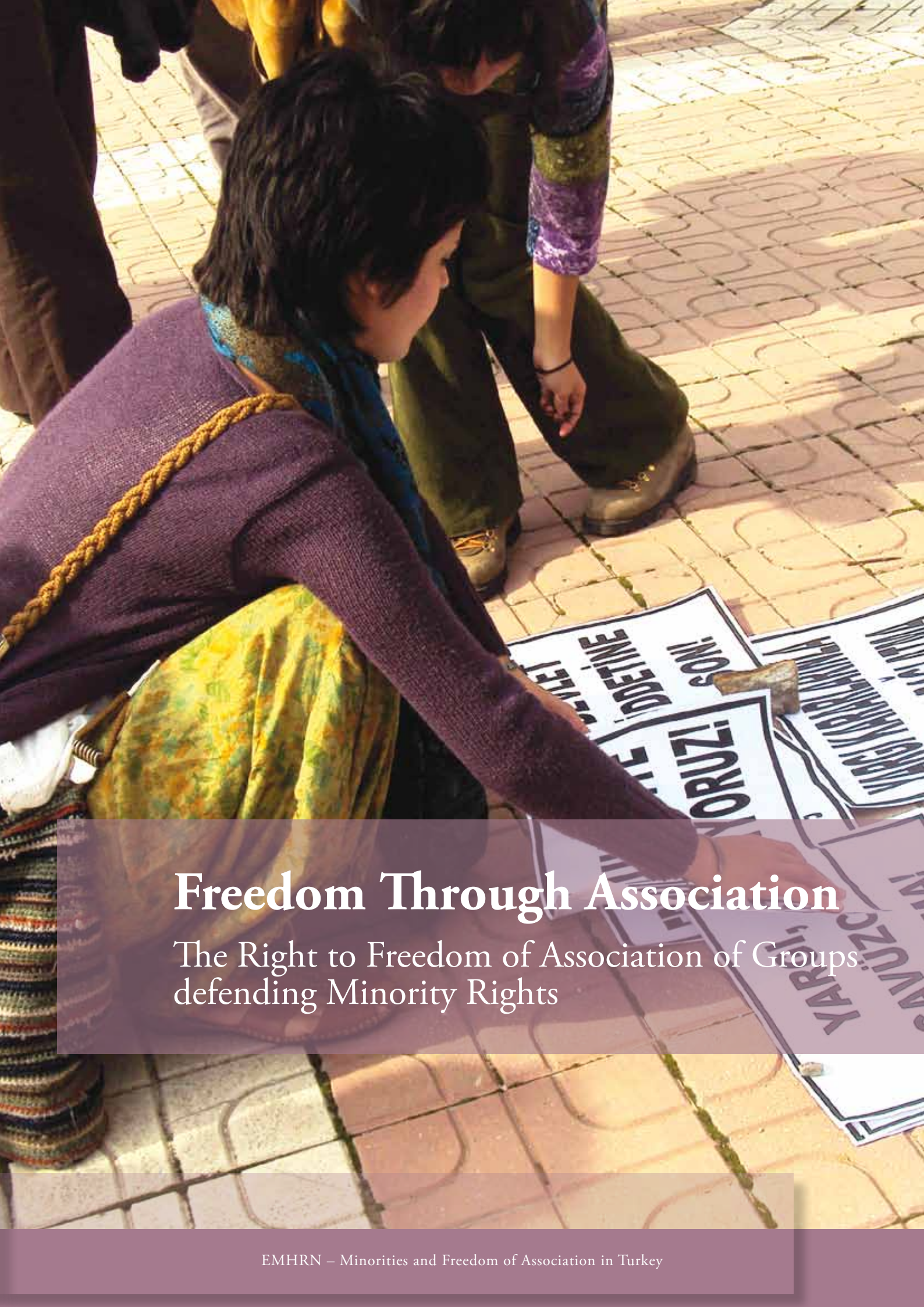
59 Article 5 of the Law on Association.

60 Article 5 of the Law on Association.

them to advocate for the rights of minorities, by removing most of Article 5 of the previous law.

Thanks to these changes many foreign organisations have established representation offices or branches in Turkey. However, the applications made by of a number of such organisations have been rejected unlawfully. Global Dialogue for example, a London based international charity that gives grants to inter alia many minority organisations in Turkey, applied to the Ministry of Interior in June 2010 to open a representation office in Istanbul; however their application was rejected without giving any reasoning. After the commencement of legal proceedings against the decision of the Ministry, Global Dialogue found out that in its opinion on Global Dialogue, prepared for the Ministry of Interior, the Ministry of Foreign Affairs had reported that Global Dialogue had called Kurds ‘marginalised minorities’, had funded an LGBTT NGO that was facing closure (even though the NGO was not closed eventually and an NGO can receive grants during legal proceedings for closure), and the person assigned as the representative of Global Dialogue in Turkey had written a report on education rights of minorities in Turkey. The case is still pending.

Experiences show that implementation of law, in particular reforms targeting protection of human rights, is still problematic. More effort from the government is required to adopt further reforms and take measures to ensure implementation of the law and develop legal and administrative remedies for those whose rights have been violated.



Freedom Through Association

The Right to Freedom of Association of Groups
defending Minority Rights

A) Restrictions on the aims of associations

Article 33 of the Constitution guarantees everyone the right to form associations, or become a member of an association, or withdraw from membership without prior permission. In line with the Constitution, Article 57 of the Civil Code and Article 3 of the Law on Associations provide that real persons and legal entities have the right to establish associations without prior permission. Associations need to provide a copy of their statute and a number of other documents to the Desk of Associations based in Governorates to be registered. Desks of Associations are linked to the Directorate of Associations in Ankara, and are the authorised bodies that deal with everything concerning associations at local level. An association is considered to be established as soon as its statute and other required documents are submitted to the Desk of Associations. The formation of foundations is subject to approval by the local courts.¹

Article 10 of the Constitution, guaranteeing equality before law, read together with Article 33, as above, guarantees all racial, religious, linguistic and sexual groups the right to establish associations as protected by Constitution and national law. Since the introduction of amendments in the Law on Associations in 2004, minorities are entitled to set up associations indicating their identity in its name and to protect and promote their culture. Upon these changes in law, many minority groups, including Kurds, Roma, Assyrians, Circassians, Alevis, Laz and recently Armenians, and groups defending the rights of LGBTTs, have established such associations.

A number of minority groups did not face any difficulty in establishing associations. Laz Culture Association, for example was set up in 2008. Mehmedali Barış Beşli, its President states that they did not face any problem in establishing the association. Instead authorities were helpful and provided guidance relating to the fulfilment of requirements.² He adds that ten years ago it would have been problematic to set up an association that included the word 'Laz' in its title. Elmas Arus, President of the Zero Discrimination Association, states that they set up the association in March 2009 without facing any difficulty or interference - instead they also received support and guidance. She thinks that after the democratic opening started and Prime Minister Erdoğan met Roma publicly, public authorities may have begun to treat Roma and the activities related to

1 Article 102 of the Civil Code.

2 Interview with Mehmedali Barış Beşli, President of Laz Culture Association, Istanbul, 21 February 2011.

Roma more favourably.³ There are 11 Federation of Roma NGOs and at least 130 Roma Associations. The number of other minority associations is also increasing. Currently there are five associations containing the word 'Circassian' in their title and Cumhur Bal, the General Coordinator of the Federation of Caucasian Associations, says that they are expecting this number to increase.⁴ Even though minorities are entitled to establish associations to promote their culture and use the word referring to their distinct identity in the name of the association, they are still cautious while choosing a name for the association and drafting the statute. Hosrof Köletavitoğlu says that initially they did not dare to use the word 'Armenian' in Turkish or Armenian language. However, they were encouraged by the authorities to do so while they were reminded the changes in the Law on Association. He adds that they received some guidance and a positive attitude from the public officers while setting up the association.⁵

The experience of some minority associations and those advocating for minority rights among other things was different however. Some associations were asked to change their statutes during registration, such as Kurd-Der, and some had to change their statute to avoid the risk of closure, such as Eğitim-Sen. Some faced the risk of closure. The situation has been tough particularly for LGBTT associations as almost all LGBTT organisations faced legal proceedings for their closure (See Part III).

3 Interview with Elmas Arus.

4 Interview with Cumhur Bal.

5 Interview with Hosrof Köletavitoğlu, President of the Malatya Philanthropist Armenians Culture and Solidarity Association, Istanbul, 08 March 2011.

The current Law on Associations prohibits the establishment of associations aiming to realise aims that are openly forbidden by the Constitution or law, or to realise actions whose content qualify as a criminal offence.⁶ The wording of this provision gives a relatively large margin of appreciation to the authorities. Some aims that qualify as legitimate according to international standards can be interpreted as contrary to the Turkish Constitution by the national authorities. Promoting minority rights, advocating for education in mother tongue for example, can be regarded as a grounds for closure of an association, as they are seen to be contrary to the Constitution. In particular, Article 3 of the Constitution that states the language of the State is Turkish, and Article 42 that bans any language other than Turkish to be taught as mother tongue, have been used by the authorities to restrict targets and activities of minority NGOs or those advocating for the rights of minorities⁷. A number of NGOs faced closure due to a number of aims they had listed in their statute. One of the striking examples is Eğitim-Sen, the Trade Union of Education and Science Labourers. This trade union faced closure in 2004 after an application made by the Turkish General Staff, on the

6 Article 30 of the Law no 5253.

7 Article 3 of the Constitution reads as 'The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish. Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background. Its national anthem is the "Independence March". Its capital is Ankara.' Article 42 reads as '...No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved...'

ground solely of referring in its statute, to the right of individuals to education in their mother tongue, and the development of their culture.⁸ Although the Labour Court rejected the application twice, both decisions were overturned by the High Court of Appeal. The Court of Appeal, held that there had been a violation of Articles 3 and 42 of the Turkish Constitution, and Article 20 of the Law no. 4688 on Trade Unions of Public Officials, which states that unions cannot violate fundamental principles of the Republic and democracy, protected by the Constitution. The Union finally removed this reference from its statute to avoid closure.⁹

The Kurdish, Democracy, Culture and Solidarity Association, *Kurd-Der*, established in 2004, was required by the authorities to remove 'carrying out activities for Kurds to obtain their individual and collective rights and contributing to such activities' from its statute on the basis that this statement was in breach of article 5 of the Law No. 2908 and Article 3 of the Constitution that defines Turkish as the language of the state. This statement was eventually amended to avoid a case for closure of the association. Ahmet Aday, the President of *Kurd-Der* states that the risk of facing an administrative or criminal investigation due to advocating for the rights of Kurds still lays aside and this puts pressure on members of the association.¹⁰ He adds that the aims and

activities of associations can be restricted due to restrictions contained in other laws too. For example as an association they are not allowed to run Kurdish language courses due to the Law on Teaching and Education of Foreign Languages and Learning Different Languages and Dialects Traditionally Used by Turkish citizens in Their Daily Lives. They would like to be entitled to do this as the Kurdish language is not taught at any public institution or private language courses and associations promoting Kurdish language are the only places that can provide such courses today.¹¹

Problems regarding full exercise of the right to freedom of expression play a role in the exercise of the right to freedom of association. Provisions in a number of laws, particularly anti-terror related provisions, can also be used to limit the rights of associations. Certain provisions in the Penal Code are the most frequently used ones: Article 220/6 states that the commission of a crime on behalf of an illegal organisation will be charged the same as membership with the organisation: Article 220/8 of the Penal Code bans propaganda supporting the aims of an illegal organisation; Article 314 bans membership of an armed organisation. Muharrem Erbey, Vice president of Human Rights Association (IHD) was charged with this last provision for example. More information on his trial is provided below. Likewise a number of provisions in the Anti-Terror Law can be used to charge representatives of human rights associations or participants in some demonstrations. It must be noted that the

8 Kaya, Nurcan, *Forgotten or Assimilated: Minorities in the Education System of Turkey*, Minority Rights Group, pp. 15-16.

9 Kaya, Nurcan, *Forgotten or Assimilated: Minorities in the Education System of Turkey*, Minority Rights Group, pp. 15-16.

10 Interview with Ahmet Aday, the President of *Kurd-Der*, Ankara, 18 February 2011.

11 Law no 2923, adopted on 14 October 1923, Official Gazette no: 18196, date 19 October 1983. Interview with Ahmet Aday, the President of *Kurd-Der*, Ankara, 18 February 2011.

Law on Associations includes provisions that foresee imprisonment in cases of violation of the Law. For example according to Article 32/p of the Law, those that establish associations to fulfil forbidden aims (as regulated in Article 30) or board members that violate this prohibition can be sentenced to 1 to 3 year imprisonment.

B) Discriminations when joining an association

The Civil Code protects the right of everybody to join an association¹². It also guarantees equality to all association members irrespective of their language, religion, race and sex¹³. Despite this guarantee in law, the lack of legal protection prohibiting discrimination against LGBTTs and widespread discrimination against LGBTTs particularly in work life, prevent some LGBTTs working in the public sector and a number of other fields, from becoming member of an LGBTT organisation. There is no law that protects LGBTTs against discrimination in any field of life. Neither the Constitution, nor labour and other codes prohibit discrimination on the ground of sexual orientation or sexual identity specifically. Moreover, certain provisions in law can be used to dismiss homosexuals from employment, even though they do not directly refer to homosexuality. For example according to the Law on Civil Servants, those that act in a shameful way and inconsistent with being civil servant can be dismissed and in practise a number of homosexuals are reported to have been dismissed under this

12 Article 64 of the Civil Code.

13 Article 68 of the Civil Code.

regulation. A report published by KAOS-GL, an LGBTT organisation, provided information on the situation of persons subject to this form of discrimination. One of them was a teacher and dismissed due to her/his sexual orientation.¹⁴ Therefore, many LGBTTs are reported to be fearful of joining an LGBTT organisation or carry out any activity related to LGBTTs even in mainstream organisations as this may disclose their identity and cause dismissal from their duties.¹⁵ Another issue that is reported to affect membership with an LGBTT organisation is the authorities' right to visit associations and search their files, including the list of members.¹⁶ This practice is also reported to cause disclosure of members and thus discourage many LGBTTs from becoming member of an LGBTT organisation.¹⁷

C) Formation of federation

When it comes to establishing a federation, the former Law on Associations allowed only associations that had charitable status to set up federations.¹⁸ Obtaining charitable status was deemed difficult, as it could be granted by a decree of the Council of Ministers.¹⁹ Because of this limitation, minority NGOs tend to set up associations called 'unity

14 Law no. 657, adopted on 14 July 1965, Published at Official Gazette no. 12056 on 23 July 1965. Article 125.

15 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

16 Article 19 of the Law no. 5253.

17 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

18 Article 34 of the Law no. 2908.

19 Article 59 of the Law no. 2908.

of...' which tries to unify the activities of a number of associations established for a similar cause. One of the examples of this was the Association for Unity of Alevi Bektaşî Institutions that was established in 2000. The statute of this association was de facto not accepted by the Governorate and finally the statute of the association was sent by service of process through notary and the association was registered in this way. Kazım Genç, an attorney and former General Secretary of the Alevi Bektaşî Federation states that 5-6 months after this they received a communication from the Governorate asking the association to remove the word 'Alevi' and the targets 'protecting Alevi belief, building Cemevis (worship place of Alevis)' from its statute on the basis that these were against the unity of the State. The Board of the association responded to the Governorate stating that they would not change their statute. Upon this, the Governorate applied to the public prosecutor to prosecute the board members of the association for their separatist activities. The Prosecutor decided there was no need to begin a legal investigation. Moreover, a case for closure of the association was filed and in February 2002 the Court ruled in favour of its closure. In May 2002, the High Court of Appeal overturned this judgment by 3 to 2 votes on the basis that separatism was not a target in the statute of the association.²⁰

Changes in the Law on Associations by a reforming law adopted in 2002 also enabled other associations to form federations.²¹ Five associations established for the same purpose

can set up a federation. In October 2002, the Alevi Bektaşî Federation was set up and it did not face any legal proceedings against it.²² Currently there are three Alevi Federations in Turkey. The experience of Circassians was similar. In 1993 they established an association called Headquarter of Caucasian Federation. The existing associations turned into branches of this association to ensure unification as they were not permitted to set up a federation. They had 33 branches when the law changed in 2002 and allowed the establishment of federations. All 33 branches dissolved themselves and were established again as Caucasian associations. In 2003 they formed the federation and all newly set up associations joined the federation. At the moment the Federation of Caucasian Associations has 61 members.²³

D) Creation of a foundation

The Civil Code forbids the establishment of foundations that have aims that are contrary to constitutional principles of the Republic and basic principles in the Constitution, law, morals, national unity, national interest, and those that aim to support members of a specific race or community.²⁴ They can be established by individuals or organisations to donate certain property and rights for a certain cause.²⁵ A foundation is set up by approval of its statute by the court of first instance. The Directorate General of Foundations (DGF),

²² Interview with Kazım Genç.

²³ Interview with Cumhur Bal, General Coordinator of the Federation for Caucasian Associations, Ankara, 26 February 2011.

²⁴ Article 101 of the Law no 5253.

²⁵ Article 101 of the Law no. 4721.

²⁰ Interview with Kazım Genç, attorney, former General Secretary of the Alevi Bektaşî Federation, Ankara, 25 February 2011.

²¹ Law no 4748, adopted on 26 March 2002, published in the Official Gazette no 24712, date 09 April 2002.

the central body dealing with foundations, can apply to the court against this approval.²⁶ The application to register the Kurtuluş Protestant Churches Foundation in Ankara in 2000 was rejected by the Court of First Instance relying on the opinion of the DGF that registration of this foundation was incompatible with the Civil Code, which bans foundations supporting members of a certain community. The Directorate was at the opinion that the main purpose of the foundation was to serve the interests of the Protestant community and this was against the law. In 2002 the judgment was upheld by the Court of Cassation. The applicants applied to the Court of Cassation to review its decision, arguing that it had misinterpreted the foundation's statute, which was in fact to provide support to people in need and to victims of natural disasters, regardless of their beliefs or religion. They added that should the Court of Cassation change its judgment they would amend their statute to reflect the real intentions of the founding members. On 14 February 2002 the Court of Cassation rejected their request. In 2004, a number of the applicants formed an association which had aims similar to those of the foundation, but they did not refer to the interests of Protestants or any particular group in their statute. An application was made to the ECtHR on the basis of violation of Article 11 of the ECHR which protects freedom of association. In its 2009 judgment, the Court found violation of Article 11 on the grounds that 'the ability to establish a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of freedom of association'; and the refusal to register the foundation, although permitted under Turkish law, had not been

26 Article 103 of the Law no. 4721.

necessary in a democratic society.²⁷

The standards drawn with the ECtHR judgment can be applied to setting up associations and their closures too. The judgment emphasises that freedom of association can be limited only when it is necessary in a democratic society. A recent application to set up a foundation which inter alia aimed to carry out some religious and educational activities for Armenians was rejected by the Court of First Instance No. 5 in Istanbul relying on Article 101/4 of the Civil Code, which forbids setting up foundations that aim to support members of a specific race or community.²⁸

27 *Özbek and Others v. Turkey* (application no. 35570/02), 06 October 2009, European Court of Human Rights.

28 Sasonlu Ermeniler AİHM'e gidiyor, *Batman Çağdaş Daily*, 09 March 2011. Accessed on 13 March 2011, at <http://batmancagdas.com/sasonlu-ermeniler-aihme-gidiyor.htm>

A) Relations with authorities – burdensome procedures

The Law on Associations and relevant regulation require associations to fulfil many burdensome procedural requirements and foresees fines for those which do not fulfil them. The law also gives power to Desk of Associations to visit associations, check their accounts, notebooks, files and decide for fining them when associations do not fulfil some requirements. They also apply to the prosecutor against board members if they have violated the Law and if imprisonment is foreseen for the violation in question. In practice, procedures that are not in law or regulation can also be imposed on associations. For example, associations need to notify authorities when receiving grant from abroad even though such notification is not required for the grants received from national sources.¹ Some Desks of Associations have asked Banks in their provinces to request documentation from associations to prove that they have given notification to the Desk of Associations about the grant sent from abroad before withdrawing the money, even though according to law associations are not obliged to provide any documentation to the banks.²

Associations are expected to fulfil standard financial and social security requirements, as do profit-making organisations, and these increase the financial burdens of the associations which usually lack adequate funding. Firat Söyle, a volunteer from Lambda says these financial burdens are so heavy that he believes they constitute a breach of the right of freedom of association.³ They are obliged to provide annual financial and activity reports to the Desks of Associations.⁴ Additionally, the Desks of Associations have the power to check the financial accounts of an association and this power can be exercised excessively. Helsinki Citizens Assembly (HCA) for example, in 2007, was asked by the Desk of Associations to provide documents on two projects, one completed in 2001, the other in 2003. The authorities wanted the association to show whether the grants received six years earlier were used for the aim of the project and provide the financial report of the project.⁵

1 Article 21 of the Law no. 5253.

2 Written answers provided by Emel Kurma, General Coordinator of HCA and Ebru Uzpeder, Project Coordinator at HCA on 17 May 2011.

3 Written answers provided by Firat Söyle, March 2011.

4 Article 19 of the Law no. 5253.

5 Written answers provided by Emel Kurma, General Coordinator of HCA and Ebru Uzpeder, Project Coordinator at HCA on 17 May 2011

The extensive use of the power of the state authorities has been criticised by a number of organisations. In its 2010 progress report on Turkey, the European Commission expressed concerns regarding disproportionate administrative checks and fines against civil society organisations and added that “..Moreover, the bureaucratic requirements for fund-raising, obtaining public benefit status and lack of simplified rules for small or medium-sized associations prevent a more enabling environment for associations. More restrictive legislation applies to foreign associations. Overall, the legal framework on freedom of association is broadly in line with EU standards. However, associations face difficulties to meet legal requirements and some are subject to disproportionate controls.”⁶

All associations need to have a board composed of 5 main and 5 subsidiary members, an audit committee composed of 3 main and 3 subsidiary member; and a general council composed of the members. Within 6 months following the establishment of an association, it needs to organise the first general assembly and form all obligatory bodies. Even though according to law seven individuals can establish an association, in practice an association can be managed by more than 20 individuals. Associations do not have autonomy over the formation of its structure and its internal control mechanisms.

All these bureaucratic requirements and the power of the Desk of Associations make everyday life of associations difficult. Young associations particularly find it difficult to fulfil all requirements. One of the board

6 European Commission, 2010 Progress Report on Turkey, page. 22

members of the Armenian Culture and Solidarity Association states that there are many bodies that they need to form to set up an association and they do not have flexibility with setting up these bodies or changing the number of member of these bodies. She adds that for very simple things, such as buying furniture, they need to take decision as a board and record them in the notebook of the association. They need to get many documents notarised and even documents required by different notaries may vary. There is a website of the Directorate of Associations and information on rules is provided there. However, sometimes there is a need for more information and advice. The Desk of Associations does not allocate a specific person to respond to their queries on the phone. Furthermore, association members need to visit the Desk of Associations each time they need clarification or advice on procedures, which may discourage people from getting associated.⁷ Cumhur Bal, the General Coordinator of the Federation of Caucasian Associations shares a similar concern and says that bureaucratic requirements discourage some people from joining board of an associations.⁸

The bureaucratic requirements and power of the authorities show that associations are seen as potential danger to the state and need to be controlled by State authorities. Although associations have members and their own internal control mechanisms, they are subject to extensive control by the State authorities. Hosrof Köletavitoğlu thinks

7 Interview with board member of the Armenian Culture and Solidarity Association, Istanbul, 07 March 2011.

8 Interview with Cumhur Bal, General Coordinator of the Federation of Caucasian Associations, Ankara, 26 February 2011.

that some bureaucratic requirements are in reality mechanisms to control associations. It makes them think that the State does not trust associations.⁹ Representatives of some national human rights organisations working on minority rights and discrimination issues, among other topics, share the same view. Feray Salman, the Coordinator of Human Rights Joint Platform states that the existence of the Desk of Associations, bureaucratic requirements and the power given to the Desks amount to penalty mechanisms.¹⁰ Her views are shared by Emel Kurma, General Coordinator of HCA and Ebru Uzpeder, Project Coordinator from HCA.¹¹ Salman is one of those who propose that instead of referring to the the Directorate of Associations, associations declare tax to the authorities and their accounts be audited or controlled by the finance authorities as any organisation or company. Likewise association insurance-human resource related obligations could be controlled by the Institution of Social Security.¹²

Elmas Arus, states that there are burdensome bureaucratic requirements in the establishment and managing of an association. She asserts that associations need to pay VAT and withholding tax for grants that they receive, even though they are not profit-making organisations. Only

9 Interview with Hosrof Köletavitoğlu, President of the Malatya Philanthropist Armenians Culture and Solidarity Association, Istanbul, 08 March 2011.

10 Phone interview with Feray Salman, Coordinator of Human Rights Joint Platform, 18 May 2011.

11 Written answers provided by Emel Kurma, General Coordinator of HCA and Ebru Uzpeder, Project Coordinator at HCA on 17 May 2011.

12 Phone interview with Feray Salman, Coordinator of Human Rights Joint Platform, 18 May 2011.

associations that have charitable status, which can be obtained only by a decree of the Board of Ministers, are excluded from this. In order to operate more freely, all associations, who are financially very weak, should be excluded from taxes.

Some minority organisations in Turkey believe that the power given to authorities can be used in a discriminatory fashion against their associations. Umut Güner from KAOS-GL believes that KAOS-GL is treated less favourably compared to other associations. He states that Desks of Associations have the right to visit associations according to law. However, he has observed that KAOS-GL is visited annually while many other associations are not. He thinks that even though the Desks are entitled to give warning to associations for not fulfilling some requirements, they tend to give fines, which creates financial burdence for associations that already suffer from a lack of resources.¹³

The former Law on Associations required prior permission of the Ministry of Interior to obtain funds from individuals or organisations abroad.¹⁴ The new Law on Associations improved this situation as associations are now entitled to receive funds from abroad without subject to prior permission. However, they need to give prior notice to authorities, even though such notice is not required for fundraising at local level.¹⁵ Umut Güner states that the authority of the Desk of Associations to check the grants received by associations from abroad is used as a tool to

13 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

14 Article 60 of the Law no. 2908.

15 Article 21 of the Law no. 5253.

monitor and even control associations. This opinion is endorsed by representatives of some minority organisations. The obligation to give notice is seen as State control of associations mistrust of foreign organisations. Delay in giving this notice or failing to give notice at all, may result in a fine. KAOS-GL for example, was fined for not giving notice on time and they were fined three times for the same grant as the grant was sent to them in three instalments.¹⁶

The obligation imposed on associations to give prior notice regarding receiving grants from abroad enables the authorities to monitor the activities of associations and they can use this power arbitrarily to harass or intimidate associations. For instance, an association focusing on political and social issues received a grant from abroad to implement a project on Armenia-Turkey relations. It submitted information on the project to the Desk of Associations as prior notice. Upon this, the Desk called the association and invited board members to visit the Desk. During their visit, the Head of the Desk of Associations recommended that the association implement projects on different subjects and added that there was no need to carry out projects on the subject in question. The association feels cautious now about implementing projects on similar subjects¹⁷. It must be noted that the representatives of the association concerned did not want their names or the name of the association to be disclosed in this report to avoid further interferences from the authorities.

Many activists met for the writing of this report are of the view that State should not differentiate between foreign and local

individuals or organisation when it comes to receiving grants.¹⁸

B) Freedom of Assembly

Article 34 of the Constitution is entitled 'Right to Hold Meetings and Demonstration Marches' and guarantees everyone the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. Similar to other provisions on human rights protection in the Constitution, the second paragraph of this provision includes conditions for restriction of this right. The paragraph states as: '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 public health and public morals or for the protection of the rights and freedoms of others.' The Law on Meetings and Demonstrations and Marches is the main legislation that deals with the right to freedom of assembly. Article 3 of the Law states that everyone has the right to organise meetings and demonstration marches that have aims that are not prescribed criminal by law and without use of gun and attack, without prior permission. However, the planning committee of the meetings need to give notice to governorate offices a minimum of 48 hours before the meeting takes place. In practice, even though everyone can use the right to demonstrate without prior permission, sometimes demonstrations are prevented by the police on the basis of being 'not permitted' instead of being described as 'not notified'. Use of the term 'not permitted demonstration' has caused a false impression among society as such demonstrations are unlawful.

¹⁶ Interview with Umut Güner.

¹⁷ Interview with the president of the association, Istanbul, 17 June 2011.

¹⁸ Interview Mehmedali Barış Beşli, Istanbul, 21 February 2011.

Article 23 of the Law on Meetings and Demonstration Marches includes a list of unlawful meetings and demonstrations. This includes those that are organised without prior notice, or those attending by people who cover their faces or use slogans that are deemed criminal according to law.

While progress on the exercise of this right in general is reported, concerns about use of excessive police violence in the context of demonstrations in the Southeast of the country related to the Kurdish issue have been expressed by various bodies. The European Commission for example raised this concern in its 2010 progress report on Turkey¹⁹, as well as ECRI in its 4th periodic report on Turkey.²⁰

Concerning anti-terror laws, ECRI reported that according to Article 220 of the Penal Code, persons that are considered to have acted on behalf of a terrorist organisation may be prosecuted as member of that organisation whether or not they are indeed members.²¹ In practice persons that have solely attended demonstrations can be charged with terrorist offences, under this provision. Keziban Yılmaz, an attorney, Board member of IHD Diyarbakır Branch and member of Diyarbakır Bar Association claims that if a demonstration or march takes place in southeast Turkey – even those

unrelated to Kurdish issues, -, and if during demonstrations certain slogans that are deemed unlawful or related to PKK are used, participants of these demonstrations can be charged with committing a crime on behalf of the terrorist organisation under Article 220/6 of the Penal Code. This is regardless of their role in the demonstration and whether or not they have actually expressed the slogan in question. Such persons are additionally charged under Article 2/2 of the Anti-Terror Law that endorses Article 220/6 of the Penal Code, and Article 28 of the Law on Meetings and Demonstration Marches. They can be sentenced to more than 9,5 years' imprisonment under these provisions. Yılmaz adds that many of these people remain in detention during the investigation and trial period, and that some of the trials can last for years; in some cases even if there is no evidence of participation in the demonstration, some persons are charged simply on the basis of the arrest report prepared by the police. Yılmaz also points out that not only participants of demonstrations organised by BDP face this situation, but also participants of other demonstrations in the regions. For example indictments against some suspects in the KCK trials refer to their activities related to protesting against the Ilisu Dam that is under construction and will cause the flooding of the historical town, Hasankeyf.²²

Article 2/2 of the Anti-Terror Law, states that "Those that commit crime on behalf of the a terrorist organisation are considered as terrorists and charged in the same way as members of the organisation, even if they are not actually members of the terror

19 European Commission, 2010 Progress Report on Turkey, page 22.

20 See also the report of the European Commission against Racism and Intolerance report on Turkey, CRI(2011)5, published on 8 February 2011. Paragraph 116.

21 ECRI report, paragraph 29. Article 220/6 of the Penal Code reads as: "While not being member of the organisation, a person, who commits a crime on behalf of the organisation will additionally be charged with membership with the organisation."

22 Interview with Keziban Yılmaz, Board member of IHD Diyarbakır Branch and member of Diyarbakır Bar Association, Diyarbakır, 12 May 2011.

organisation' This provision has resulted in the charging of minors that attended demonstrations as terrorists, in addition to charges under the Law on Meetings and Demonstration Marches. In its call for action released in November 2010, Amnesty International criticised this situation while stating that 'many children had been detained in adult detention facilities without record of the detention being made, and without the children having access to lawyers or their family. In many cases, once charged, the children have been remanded in custody, with pre-trial detention periods ranging from several months to over a year. During the detention period, these children often did not have access to education, health facilities and leisure activities. Many children have reported ill-treatment and torture during their arrest and their subsequent detention'.²³ These children were tried in Special Heavy Penal Courts for adults that are competent to try cases related to terrorism, state security and organized crime.

Thanks to amendments made to the Anti-Terror Law and the Law on Meetings and Demonstration Marches in July 2010, children that violate the Law on Meetings and Demonstration Marches will not be charged under Article 2/2 of the Anti-Terror Law in addition to charges under the Law on Marches and Demonstrations. Contrary to rules applying to adults, any of their charges under Anti-Terror Law will not be increased by 50 per cent; and those at the age of 15 years old and more must be tried at Juvenile

23 Turkey: All Children Have Rights, Amnesty International, 19 November 2010. Accessed at <http://www.amnesty.org/en/appeals-for-action/turkey-all-children-have-rights> on 15 May 2011.

Courts.²⁴

Although these changes have been welcomed by human rights defenders, children as well as adults can still be tried under the Penal Code for committing a crime on behalf of a terror organisation or for being a member of the organisation, simply by virtue of attending demonstrations as explained above. According to BIANET, an online news agency, in February 2011, 55 children were held by Children's Courts under Article 220/6 and 314/2 of the Penal Code.²⁵ Moreover, children cannot be tried under Anti-Terror law for attending demonstrations but they can be charged under this law for other actions. Vague and broad definitions in the Anti-Terror Law still need to be amended.

C) Freedom of Expression of Association and Use of languages other than Turkish in activities

One of the Acts that is used to restrict activities of LGBTT associations is the Code for Protection of from Obscene Publications.²⁶ In the past, a book and a journal published by KAOS-GL were confiscated on the basis of violating this law.²⁷

The ban on use of languages other than Turkish in activities of associations was lifted

24 Law no. 6008, adopted on 22 July 2010. Published at the Official Gazette no. 27652 on 25 July 2010.

25 'TMK Değişti, Bir Haftada 55 Çocuk Tutuklandı', BIANET, 23 February 2011.

26 Law no 1117, published in Official Gazette no 627, date 07 July 1927.

27 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

with the amendment in the law.²⁸ Since then, associations can use any language in their activities but not in official correspondence. This is reported as one of the most important developments regarding reforming the law on associations. Hüsni Öndül, one of the former presidents of the Human Rights Association (IHD) states that in 1990, one of their delegates gave a speech in Kurdish in the general assembly of IHD and his speech was translated into Turkish by another delegate. Both of them were arrested immediately and jailed for six months, simply for the use of 'Kurdish'. Today, associations now they are free to use languages other than Turkish.²⁹

Ahmet Aday, the President of Kurd-Der also states that they are free to use Kurdish in their activities. However, he adds that there is no clear guarantee in the Constitution or law for the use of languages other than Turkish and this makes them feel unsafe, under the risk of facing a restriction or investigation any time, simply for issuing a bilingual conference programme, invitation or similar materials.³⁰

D) Security of members: Harassment, detention, arrest

Progress has also taken place in relation to the security of associations and their members. IHD was established in 1986 as a human rights organisation and since its foundation, it has reported human rights violations against Kurds, including extrajudicial killings, disappearances and

village destructions. Hüsni Öndül states that the price of this was that until early 2000s, the headquarters and branches of IHD were raided by police, a number of branches were closed down (Diyarbakır branch for three years), members were detained, or harassed and even 22 of them were killed. One of the former presidents of IHD, Akın Birdal, was shot in May 1998 in the headquarters in Ankara.³¹ More recently, in 2003, the headquarters of IHD were raided, but IHD members were only told that the search was conducted based on a denunciation and they were not told anything about the accusations. All their documents and folders were searched and some were confiscated. None of the members of IHD were interrogated afterwards or informed about the result of the investigation³²

Associations defending minority rights were not excluded from this harassment before and after the military coup of 1980. Cumhuriyet Bal, states that in the 1970s, many Caucasian associations were formed in Turkey and in 1978, a meeting to discuss their unification was organised. Gun fire was opened against participants when they were leaving the meeting. One of them lost his life. He adds that before and after the coup in 1980, many presidents of Caucasian associations were detained or arrested simply for their activities on Circassians and their culture.³³

28 Law no 4748.

29 Interview with Hüsni Öndül, former President of Human Rights Association, Ankara, 18 February 2011.

30 Interview with Ahmet Aday, the President of Kurd-Der, Ankara, 18 February 2011.

31 Interview with Hüsni Öndül, former President of Human Rights Association, Ankara, 18 February 2011.

32 Phone interview with Hüsni Öndül, former President of Human Rights Association. 17 June 2011.,

33 Interview with Cumhuriyet Bal, General Coordinator of the Federation of Caucasian Associations, Ankara, 26 February 2011.

The situation is much better today. However, harassment of members of associations defending minority rights still takes place. Kurd-Der is one of them. Ahmet Aday, the president of Kurd-Der reports that their office was never raided by the police. However, civil police wander around their office and sometimes follow their visitors which scares members or visitors, particularly university students that do not wish to be identified. Aday adds that one of their secretaries was frequently followed by the police all the way to her home earlier this year and that police stopped this after she reacted to them. Aday concludes saying he feels unsafe all the time. He uses different directions to go home fearing that he may be followed and become subject of an attack.³⁴

Cumhur Bal expresses similar concerns. He states that some Caucasian associations are visited by intelligence officers and their board members are unofficially interrogated on their activities. The president of one of Caucasian associations resigned due to this harassment and pressure from the intelligence services. Cumhur Bal says all members of the association feel under pressure.³⁵

National human rights organisations may also face harassment by police or intelligence officers during their activities. Civil police secretly attended a conference that HCA had organised on 'Language Rights in EU Accession Process', recorded the conference with their camcorders and additionally tried to take sound and visual records taken by the

34 Interview with Ahmet Aday, President of Kurd-Der, Ankara, 18 February 2011.

35 Interview with Cumhur Bal.

University that hosted the event.³⁶

Harassment of IHD branches and members takes place in different ways. Reyhan Yalçındağ, member of Honorary Board of IHD, states that they see intelligence members wandering around the office sometimes. They receive silent calls and sometimes threats. She believes that their phone communications and emails are monitored unlawfully and they are subject to all these interferences simply because of they defend the rights of victims of human rights.³⁷ Hüsnü Öndül states that just because they advocate against violation of human rights of Kurds they were profiled as separatists in the past. In 2010 they organised an event on 24 April 1915 and then they were profiled as pro-Armenian.³⁸

The wide definition of terrorism under Anti-Terror Law and some provisions of the Penal Code can still result in the prosecution of members of associations for activities they have carried out. Hüsnü Öndül points that in 1990s, thanks to the power given to the governorates of state of emergency region, branches of IHD were closed down. Since 2000, presidents and board members of IHD branches have been and continue to be charged, thus the form of violation of freedom of association has changed.³⁹ Reyhan Yalçındağ, member of Honorary Board of IHD endorses this argument and cites the cases brought against some IHD

36 Written answers provided by Emel Kurma, General Coordinator of HCA and Ebru Uzpeder, Project Coordinator at HCA on 17 May 2011.

37 Interview with Reyhan Yalçındağ, member of Honorary Board of IHD, Diyarbakır, 11 May 2011.

38 Interview with Hüsnü Öndül.

39 Interview with Hüsnü Öndül

members as example. Selahattin Demirtaş, currently member of parliament and the pro-Kurdish Peace and Democracy Party, was convicted by the criminal court in September 2010 for propaganda for a terror organisation for a speech he made when he was the president of IHD Diyarbakır.⁴⁰ Members of the Human Rights Association (IHD) and Göç-Der have been arrested and charged for offences connected to their membership of the Kurdish Communities Union (KCK), which is alleged to be the urban branch of the Kurdistan Workers' Party (PKK) for activities including some carried out on behalf of the associations. This has been criticised by many national and international NGOs⁴¹ and even some inter-governmental bodies, including the European Commission.⁴²

Muharrem Erbey, Vice-President of the Human Rights Association and President of its Diyarbakır branch, Arslan Özdemir and Roza Erdede, members of IHD Diyarbakır branch, and Vetha Aydın, President of IHD Siirt branch, have been in detention since December 2009 for being members of KCK/ PKK. IHD Diyarbakır Branch was raided in relation to the arrest of Muharrem Erbey

40 Selahattin Demirtaş'a Hapis Cezası, 28 September 2010, Samanyolu Haber. Accessed at http://www.samanyoluhaber.com/h_456217_bdp-genel-baskani-selahattin-demirtasa-10-ay-hapis-cezasi.html on 11 May 2011.

41 See 'Turkey: Rights Defenders Arrested, New Crackdown on Kurdish Mayors and Activists, Press statement of Human Rights Watch, dated 12 January 2010; Joint Open Letter by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), to the Authorities in Turkey, dated 24 February 2011..

42 European Commission, 2010 Report on Turkey, page 35.

on 24 December and on 16 March 2010 the Siirt Branch was searched. Police raided Muharrem Erbey's home towards morning on 24 December 2010. Mr. Erbey asked to call his lawyer to be present during search of his home but his request was refused.⁴³ There was a search warrant to search his room in IHD Diyarbakır office. Reyhan Yalçındağ says they objected to this warrant since any criminal charge against Mr. Erbey did not give any right to search the association and any such practice would be unlawful. However, on the contrary, the warrant was extended to the whole association.⁴⁴ Hard discs of 12 computers, all the CDs, DVDs, books, archive and documents were confiscated and not returned for a number of months. This affected the work and mission of association negatively - many applications by victims of human rights violations were among the confiscated documents. As a result, the association could not act on time for example, in submitting applications to the ECtHR within the time limit in some cases.⁴⁵

During the interrogation by the public prosecutor Mr Erbey was questioned about attending the Constitution related activities of the Democratic Society Congress (DTK), as a lawyer representing PKK members for free, giving speeches at Roj TV, a Kurdish broadcast, and in relation to a number of press releases. He was interrogated for 36 hours and during this time he was not

43 Interview with Hayrettin Güzel, attorney representing Muharrem Erbey, Diyarbakır, 10 May 2011

44 Interview with Reyhan Yalçındağ, member of Honorary Board of IHD, Diyarbakır, 11 May 2011.

45 Ibid.

allowed to eat or sleep.⁴⁶ Neither Mr. Erbey nor lawyers were informed about charges against Mr. Erbey as the investigation was classified as 'confidential'. 1,5 year after his arrest, in June 2010 the indictment was released. It revealed that a secret investigation was carried out since 2007 and for more than a year Mr. Erbey's phone conversations and e-mails were monitored. Mr. Erbey is charged with being member of an armed organisation under article 314/2 of the Turkish Penal Code. The indictment includes many activities that he carried out as the President of Diyarbakır Branch of IHD, such as attending a workshop on the Constitution organised by DTK in Diyarbakır and Kurdish cinema days in Italy, giving speeches at the parliaments of Belgium, Sweden and the United Kingdom on the Kurdish.⁴⁷ For the later activities, he is alleged to be member of KCK's foreign relations team. However, Hayrettin Güzel says he had actually attended those trips and activities as President of IHD Diyarbakır Branch. The indictment nevertheless alleges that he carried out activities for the armed organisation.⁴⁸ The indictment also includes interviews he gave to a radio station in Northern Iraq and the Roj TV on human rights violations in southeast Turkey. The indictment interestingly refers to his detention in 1999 and 2003 for attending "non permitted" meetings and demonstrations, even though a case was not brought against

him in relation to those activities. Hayrettin Güzel reminds that Mr. Erbey was Secretary of IHD Diyarbakır Branch during the period covered by those detentions.⁴⁹

Mr. Erbey is also charged under the Law on Meetings and Demonstration Marches.⁵⁰ The indictment refers to seven events. One of these is the press statement made for protesting against the Turkish army's military operation against PKK members in northern Iraq. Other events mentioned in the indictment include press statements made to protest against KCK detentions. Mr. Erbey is charged for two events which means that he may be sentenced up to to 3 years imprisonment twice.

Likewise, General Secretary of Diyarbakır Göçder is charged with managing an illegal organisation under article 314/1 of the Penal Code. One of the allegedly criminal activities mentioned in the indictment is organising a visit to an evacuated village for a group of foreign visitors. Muzaffer Özdemir, the President of the association states that organising the visit was an activity of the association as one of the main targets of the association was to raise awareness on displacement.⁵¹

46 Interview with Reyhan Yalçındağ, member of Honorary Board of IHD, Diyarbakır, 11 May 2011.

47 Press statement of the IHD Diyarbakır Branch, Mazlumder Diyarbakır Branch, Human Rights Foundation of Turkey, Blue Scale Jurists' Initiative, 22 January 2010, accessed at http://www.ihd.org.tr/index.php?option=com_content&view=article&id=1892&Itemid=211 on 06 March 2011.

48 Interview with Hayrettin Güzel, attorney representing Muharrem Erbey, Diyarbakır, 10 May 2011.

49 Interview with Hayrettin Güzel, attorney representing Muharrem Erbey, Diyarbakır, 10 May 2011

50 Law no. 2911, adopted on 6 October 1983, published at Official Gazette no 18185 on 8 October 1983. Article 28/1.

51 Phone interview with Muzaffer Özdemir, President of Diyarbakır Göçder, 02 May 2011.

E) Discriminatory Treatment

Article 10 of the Constitution guarantees everybody equality before the law and obliges all state organs and administrative authorities to act in compliance with the principle of equality before the law in all their proceedings and in respect of all forms of public services. In line with the provision in the Constitution, the Law on Civil Servants obliges civil servants to carry out their duties without discrimination, regardless of language, sex, race, political opinion, philosophical belief, religion and sect.⁵² There is no comprehensive law that bans discrimination committed by public and private actors or provides effective remedies for the victims of discrimination. Despite the law above, associations may sometimes face discrimination. Ahmet Aday states that the 15th of May is celebrated as a Kurdish language festival; on one occasion, they applied to the Sports and Youth Directorate in Ankara to use the Selim Sırrı Tarcan Gymnasium for an event. The authorities accepted this request first and asked the association to send them a petition. When they saw that the organiser was Kurd-Der, they were told that the gymnasium was booked. After long negotiations, the authorities informed them that they could hire the gymnasium but it would cost Kurd-Der almost 30.000 TL. As Kurd-Der could not pay this fee, they could not organise the 15 May event at the gymnasium. Aday tells of a similar experience when they attempted to use Ahmet Taner Kışlalı Gymnasium of the Çankaya Municipality.⁵³ Aday adds that they have difficulty with finding an office to

rent simply because of their identity.

Kazım Genç, states that the Alevi Bektaşî Federation was invited to become a partner in a project implemented by an Alevi organisation in Europe. However this was not approved by the Ministry of Interior and a national non Alevi NGO instead became a partner. Genç thinks that this happened because authorities did not want them to carry out activities with their counterparts abroad.⁵⁴

Renting an office space from private companies or individuals can be problematic for human rights organisations, as well as minority rights NGOs. Any organisation needs to get the approval of all residents to rent an office in an apartment block. A board member of the Armenian Culture and Solidarity Association established in October 2010 states that they thought that it would be difficult to get such approval, being an 'Armenian organisation'. Accordingly, they rented a one-room office in a commercial building. Fırat Söyle, a volunteer of Lambda says they had difficulty in finding a place to rent, as nobody wanted to rent their property to an LGBTT organisation.⁵⁵

Elmas Arus thinks that people are concerned about renting office to associations and the situation may be even worse for Roma NGOs. After many rejections, she says that they rented a small place from somebody that they knew.⁵⁶

52 Article 7. Law no. 657, adopted on 14 July 1965, Official Gazette no: 12056, date 23 July 1965.

53 Interview with Ahmet Aday, the President of Kurd-Der, Ankara, 18 February 2011.

54 Interview with Kazım Genç.

55 Written answers provided by Fırat Söyle, March 2011.

56 Interview with Elmas Arus.

Despite such experiences, there is no legal mechanism specifically provided for victims of discrimination, be it individuals or organisations.

F) Property rights of non-Muslim foundations

Despite the principle of equality before the law guaranteed by Article 10 of the Constitution, and Article 39⁵⁷ and Article 40⁵⁸ of the Treaty of Lausanne, that guarantee non-Muslim citizens of Turkey the right to set up and manage their own charitable, religious and social institutions, non-Muslim foundations have since the 1960s, been treated unequally in terms of acquiring and maintaining property. The Law on Foundations that was adopted in 1935 required all foundations to be officially registered and declare the property they owned; non-Muslim foundations fulfilled this requirement just as others did.⁵⁹ In the 1960s, the Directorate General of Foundations (DGF) stated that these declarations, known as '1936 Declarations', formed the founding statutes of the non-Muslim foundations. These declarations did

57 Article 39 of the Treaty of Lausanne states that 'Turkish nationals belonging to non-Muslim minorities will enjoy the same civil and political rights as Muslims. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law...'

58 Article 40 of the Treaty of Lausanne states that 'Turkish nationals belonging to non-Muslim minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.'

59 Law no. 2762. Adopted on 5 June 1935,. Published in Official Gazette no. 3027 on 13 June 1935.

not express the capacity of the foundations to acquire additional properties as a result of which, these foundations did not have the right to acquire any property after 1936. As a result of this, many immovable properties of non-Muslim foundations that were acquired after 1936 were confiscated by the State. In 1974, the General Board of High Court of Appeal upheld a discriminatory court decision which stated that 'legal entities that were formed by non-Turks, did not have the right to acquire property' after 1936.⁶⁰ Upon this, the DGF brought cases to the courts for cancellation of deeds of the properties acquired by non-Muslim foundations after 1936. The courts decided to return these properties to their former owners. In most of these cases, the former owners were no longer alive and where there were no heirs, the properties were passed to the Treasury or the National Estate.⁶¹

One other main problem related to non-Muslim foundations was the power of DGF to take control of foundations that allegedly were not being used for their original purpose or did not have a legally constituted board. The DGF would also confiscate properties of such foundations.

After Turkey was recognised as a candidate state to join the EU, several reform packages were adopted by the Turkish parliament to bring the domestic law in conformity with EU law. The reform law adopted in 2002 amended the Law on Foundations

60 General Board of High Court of Appeals, Date: 8 May 1974, No: E.1971/2-820, K.1974/505.

61 Kurban, D and Hatemi, K., 'The Story of an Alien(ation): Real Estate Ownership Problems of non-Muslim Foundations and Communities in Turkey', TESEV, March 2009. p. 15.

and guaranteed non-Muslim foundations the right to acquire property subject to the permission of the Board of Ministers.⁶² The law also enabled these foundations to apply to register properties that were de facto under their control. Another law adopted in 2003 required permission of DGF for non-Muslim foundations to acquire property.⁶³ The regulation adopted in 2003 imposed many burdensome bureaucratic requirements to register property and the new legislation did not guarantee registration of properties that were taken over by the State institutions or third parties after 1974.⁶⁴

The new Law on Foundations that came into force in 2008 enabled non-Muslim foundations to apply to register properties that were included in the 1936 Declarations, if the property was still in the possession of the foundation in question.⁶⁵ It also enabled these foundations to reclaim from the DGF or the Treasury the deed of the properties that were donated to these foundations or bought by them after 1936 as well as properties registered under figurative or fictitious names. Foundations were given eighteen months to apply to obtain the deed of their immovable properties. The Law also provides for a representative of non-Muslim foundations to be appointed to the Foundation Council, the highest body of the DGF. Despite these positive developments, the new Law was criticised from the first day as it did not provide a remedy for the properties that were passed to third parties, or to other State bodies or those that were returned to their

donors.⁶⁶ Moreover, the effectiveness of the Law was questioned by many human rights bodies, including the Council of Europe's High Commissioner of Human Rights⁶⁷, the ECtHR⁶⁸ and the European Commission against Racism and Intolerance (ECRI).⁶⁹

According to the figures provided in the European Commission's 2010 Progress Report on Turkey, a total of 1,410 applications for restitution were submitted by 107 foundations. At the time the report was published, 131 positive decisions were given, 347 applications were rejected and 150 requests were met without taking the cases to the Foundations Council.⁷⁰

Religious communities do not have legal personality in Turkey and in order to be able to possess property, they need to establish foundations. The new Law on Foundations enables the establishment of new foundations according to Civil Code. However Article 101/4 of the Civil Code forbids the establishment of foundations that aim to support persons of a specific origin or members of a certain community, which in practice does not enable the establishment of new religious foundations.

62 Law no. 4771. Adopted on 3 August 2002. Article 4.

63 Law no. 4778. Adopted on 2 January 2003. Article 3.

64 Kaya, Nurcan and Baldwin, Clive, *Minorities in Turkey: Submission to the European Union and the Government of Turkey*, page. 29.

65 Law no. 5737, adopted on 20 February 2008. Provisional article 7.

66 See among others, a recent report: *Müslüman Olmayan Azınlıklar Raporu – 2011*, by Kırkor Döşemeciyan, Yervant Özuzun, Murat Bebiroğlu, February 2011. Accessed at <http://hyetert.blogspot.com/2011/02/musluman-olmayan-azinliklar-raporu-2011.html> on 08 May 2011.

67 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, Chapter IV.

68 *Samatya Surp Kevork Ermeni Kilisesi, Mektebi ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey*, application no. 1480/03, judgment of 16 December 2008.

69 ECRI Fourth Periodic Report on Turkey. Published on 8 February 2011. Paragraphs 84-88.

70 European Commission's 2010 Progress Report on Turkey, published on 9 November 2010. pp. 30-31.

The right to association was almost entirely suspended after the military coup in 1980, just as was the case with many other rights. According to official figures, 23.677 associations were closed down after the military coup.¹ The Constitution (adopted in 1982) and all laws adopted after the military coup, were designed in a way to control civil society and to restrict the exercise of all freedoms. The Law on Association that was adopted in 1983 included a long list of ‘prohibited associations’, including those aimed at destroying the indivisibility of the Turkish state with its territory and nation; endangering or terminating the existence of the Republic by separatism on the basis of language, race, class, religion and sect; alleging the existence of minorities on the basis of race, religion, sect, culture or language on the territory of the Turkish Republic, or protection, development and dissemination of languages or cultures other Turkish...etc.² This long list of prohibited associations remained in force until early 2000 and was in practice used against associations that targeted or advocated for the rights of minorities. Until the 2000s, suspension or closure of associations dealing with Kurdish issue was common. Many branches of the Human Rights Association were suspended, two of them for 3 years.

Associations established by minority groups were not excluded from the policy of suppression and closure. Many associations set up by Circassians were closed down after the coup and many of them were closed down by the decision of their members due to fear. Caucasian associations started to be re-established in the mid 1980s.³

Today the situation is different. While the former law gave an extensive authority to governorates to suspend an association, the current law is different, and suspension of an association is rare. Hüsni Öndül confirms this progress, but, states that since the 2000s, pressure on associations is taking place in the form of prosecuting head of the branches. Muharrem Erbey, the Head of the Diyarbakır Branch of IHD was arrested in 2009 for membership with KCK but Hüsni Öndül asserts that Erbey’s actions attributed to KCK in the indictment are actually legal activities he carried out on behalf of the association.

Associations can be suspended or closed down any time on the ground of violating the Constitution, the Law on Associations or other legislation. The Constitution

1 ‘İşte rakamlarla 12 Eylül’, Sabah Daily, 12 September 2010. Accessed on 01 March 2011 at http://www.sabah.com.tr/Gundem/2010/09/12/30_yil_once_sabah_postal_ile_uyandik

2 Article 5 of the Law no. 2908.

3 Interview with Cumhur Bal.

states that 'Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of commitment of a crime, or protecting public morals, public health'. The Constitution states that 'Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension of a suspect, an authority designated by law may be vested with power to suspend the association. The decision of this authority shall be submitted for the approval of the relevant judge within twenty-four hours. The judge shall announce his decision within forty-eight hours, otherwise this administrative decision shall be annulled automatically.

Provisions of the first paragraph shall not prevent the imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require.

The provisions of this article are also applicable to foundations.

Today in practice, associations face closure at two separate stages: soon after registering a newly established association; and any time after getting registered.

A) Dissolving an association immediately after registration

After receiving the statute and documentation of the newly established association, the Desk of Associations can ask the founders of the association to provide any missing documentation or to change the statute of the association if it includes provisions in violation of the Constitution or the Law on Associations. If an association does not provide the necessary documentation or revise its statute, the Directorate can apply to the public prosecutor and request the opening of an investigation for the dissolution of the association.⁴ Thus, even though authorities' prior permission is not required to set up an association, the authorities can apply to the courts for the closure of associations on any of the grounds listed in the Constitution and national law, as soon as they are established.

LGBTT organisations have systematically faced the risk of closure soon after their establishment. The first LGBTT organisation KAOS-GL was set up in 2005 in Ankara. After submitting their documents to the Desk of Associations in Ankara, the Desk applied to the public prosecutor to open an investigation for dissolution of the association on the ground that KAOS-GL was against public morals. The public prosecutor decided that there was no need to commence proceedings for their closure.⁵ Even though the decision on KAOS was a precedent, LGBTT organisations that were established

⁴ Regulation on Associations, published in Official Gazette no: 25772, date 31 March 2005. Article 6.

⁵ Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

after KAOS-GL faced a similar process, while Lambda even faced closure by the decision of the local court. This shows that there is no consistency between the decision of Desks and those of the judiciary.

The Rainbow Association that was established in Bursa and the Pink Life Association that was set up in Ankara, faced a similar experience soon after their establishment. Applications filing for their closure were made to public prosecutors who decided that there were no grounds taking proceedings for their closure, after examining KAOS-GL's statute and the decision given by the public prosecutor in Ankara regarding the application brought against KAOS-GL. Lambda's experience, however, was different. Public prosecutor in Istanbul applied to the court for its closure on the basis that Lambda's aims were contrary to the morals and structure of Turkish families and that 'Lambda' was a foreign name. The local court ordered their closure. However, the High Court of Appeal overturned this decision while warning that no association could promote homosexuality. The local court endorsed this judgment in April 2009.⁶

The Black Pink Triangle Association in Izmir also faced a legal proceedings for closure. Upon the application of the Governorate in Izmir, a case was filed for their closure on the grounds that the aims of the association were contrary to the morals, but this was more than 60 days after the establishment of the association, in violation to procedural rules. The associations' request for dismissal of the case on the basis of not respecting procedural

rules was however rejected. During the court hearing, it was reported that public prosecutor stated that 'if everybody sets up an association, there will be anarchy'.⁷ The Court rejected the case on the basis that LGBTTs people have, as other individuals, the freedom to establish an association.⁸

The most positive development was probably the establishment of the Istanbul LGBTT Solidarity Association which did not face the risk of closure at the setting up stage.⁹

Applications made to public prosecutors and the filing of suits for closure of LGBTT organisations, restrict the right to freedom of association even if these have not lead to closure of associations eventually. This situation has been criticised by the European Commission.¹⁰ Such cases can potentially affect the work of LGBTT organisations as well as others that want to advocate for the rights of LGBTTs. One of the board members of a minority association states that when they were writing the statute of their association, they planned to write advocating for the rights of LGBTTs as one of their aims. However, they feared that this might lead to legal proceedings for closure; they therefore removed it from their statute, even though

⁶ Press release issued by Lambda on 30 April 2009, accessed at <http://www.lambdaistanbul.org/php/main.php?menuID=5&altMenuID=5&icerikID=7138> on 14 February 2011.

⁷ Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

⁸ Uzunoğlu, Sarphan, 'Siyah Pembe Üçgen'den Sivil ve Özgür Bir Topluma Giriş Dersi', BIANET, 30 April 2010.

⁹ Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

¹⁰ European Commission, 2010 Progress Report on Turkey, page. 22.

they aim to do so in practice.¹¹

Experience of some NGOs established to promote minority languages or culture can be similar. The Kurdish, Democracy, Culture and Solidarity Association, Kurd-Der, was established in 2004. When the Desk of Associations in Ankara received their statute, it gave a notice to the founders to remove the aim 'carrying out activities for Kurds to obtain their individual and collective rights and contributing to such activities' from its statute. Kurd-Der did not accept this request and this resulted in an application to the public prosecutor for legal proceedings for closure of Kurd-Der. Finally Kurd-Der amended its statute slightly and this led to dismissal of the application.¹² Ahmet Aday, the President of Kurd-Der thinks that autumn 2004 was an important period as EU accession negotiations were just starting. Therefore, the authorities were treating associations more favourably and carefully, which may explain the rejection of the application for the closure of Kurd-Der.¹³

Another striking example is the case filed for closure against the Çankaya Association for Building Cemevis, established in 2004, on the ground that 'building Cemevis' and 'protection of Alevi faith' should be removed from its statute. The association was asked to change its statute, but as it refused to do so, proceedings for closure commenced. The case is currently pending. Kazım Genç, the attorney representing the association

in the case, says that the Prime Ministry Directorate of Religious Affairs provided an opinion to the court, in which it stated that Alevism was within Islam and Cemevis could not be described as places of worship. Genç states that they are openly discriminated, on the basis of their belief, since there are over 20.000 associations to build mosques in Turkey, which function without any problem.¹⁴ Genç argues that the problems do not emanate from the law, rather they are due to the mentality of law implementers. He suggests that if there was a provision in the law to guarantee freedom of association to people from all beliefs, it might prevent such cases of closure and pressure from the authorities.

With regard to students' clubs at universities, it is reported that even today, many universities reject applications to establish LGBTTT clubs. Some universities even open disciplinary investigations against students that organise events related to LGBTTs. For example, KAOS-GL reports that the Akdeniz University and Black sea Technical University commenced disciplinary investigations against students who organised anti-homophobia events at their respective universities.¹⁵

11 Interview with board member of an association, Istanbul, 07 March 2011.

12 Phone interview with İhsan Güler, founding President of Kurd-Der. 26 April 2011.

13 Interview with Ahmet Aday, the President of Kurd-Der, Ankara, 18 February 2011.

14 Interview with Kazım Genç, Attorney, former General Secretary of the Alevi Bektaşî Federation. Ankara, 25 February 2011.

15 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.

B) Dissolution or Suspension of an Association at any time

Associations can be closed according to the above-mentioned constitutional provision.

In November 2008, Özgür-Der, the Association for Freedom of Thought and the Right to Education started a campaign against attending 'ceremonies and commemorations in the educational institutions that were inconsistent with their belief and identity'.¹⁶ This campaign led to proceedings for closure of the association in 2009 on the basis of violating constitutional principles.¹⁷ Eventually, the case was rejected by the Fatih Criminal Court of First Instance 2 in 2010.¹⁸

Individual (ie non association related) activities of board members of associations, or criminal investigations initiated against board members of associations for their individual activities in practice can lead to proceedings for closure of an association even though there is no ground for this in law. As a matter of law, an association cannot be charged for a private activity of a board member. However, a decision for closure of Diyarbakır Göç-Der, an NGO that had been advocating for the rights of displaced Kurds and immigrants, on the basis that one of the board members had been using the

association for separatist activities, became final in April 2011. Muzaffer Özdemir, the President of Diyarbakır Göç-Der states that one of the board members of the association was convicted of membership of an illegal organisation. The rest of the board members were investigated for the same activity but were acquitted. The application lodged by the prosecutor for the closure of the association on the basis that the activity of that board member was carried out on behalf of the association, was rejected by the Court of First Instance in 2008. The appeal of the Prosecutor was upheld by the High Court of Appeal and upon this, the Court of First Instance decided in favour of closure of the association in line with the opinion of the High Court of Appeal.¹⁹ The board members appealed against this decision, which it was overturned in April 2011. Mr. Özdemir stresses that all board members other than the convicted person were acquitted by the criminal court illustrating that the board, thus the association was not involved in the activity that caused the conviction of one of the board members. The decision acquitting them should be seen as evidence that there was no relationship between the association and the activity of the convicted board member. The Court of First Instance shared the same opinion in its first judgment. Mr. Özdemir criticises the situation on the ground that if the statute of an association does not include a prohibited aim and if no such activity is carried out on behalf of the association, the association should not be punished for the personal action of one its board members.²⁰

¹⁹ The decision on the closure of the association was addressed by the European Commission. See European Commission's 2010 Progress Report on Turkey, page 22.

²⁰ Phone interview with Muzaffer Özdemir, President of Diyarbakır Göçder, 02 May 2011.

¹⁶ 'Resmi Törenleri Boykot Çağrısı', http://www.haksozhaber.net/news_detail.php?id=5505, accessed on 04 May 2011.

¹⁷ 'Valilikten Özgür-Der'in Kapatılması için Dava', http://www.haksozhaber.net/news_detail.php?id=6887 Accessed on 04 May 2011.

¹⁸ European Commission, 2010 Turkey Progress Report, page 22. Accessed at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf on 06 March 2011.

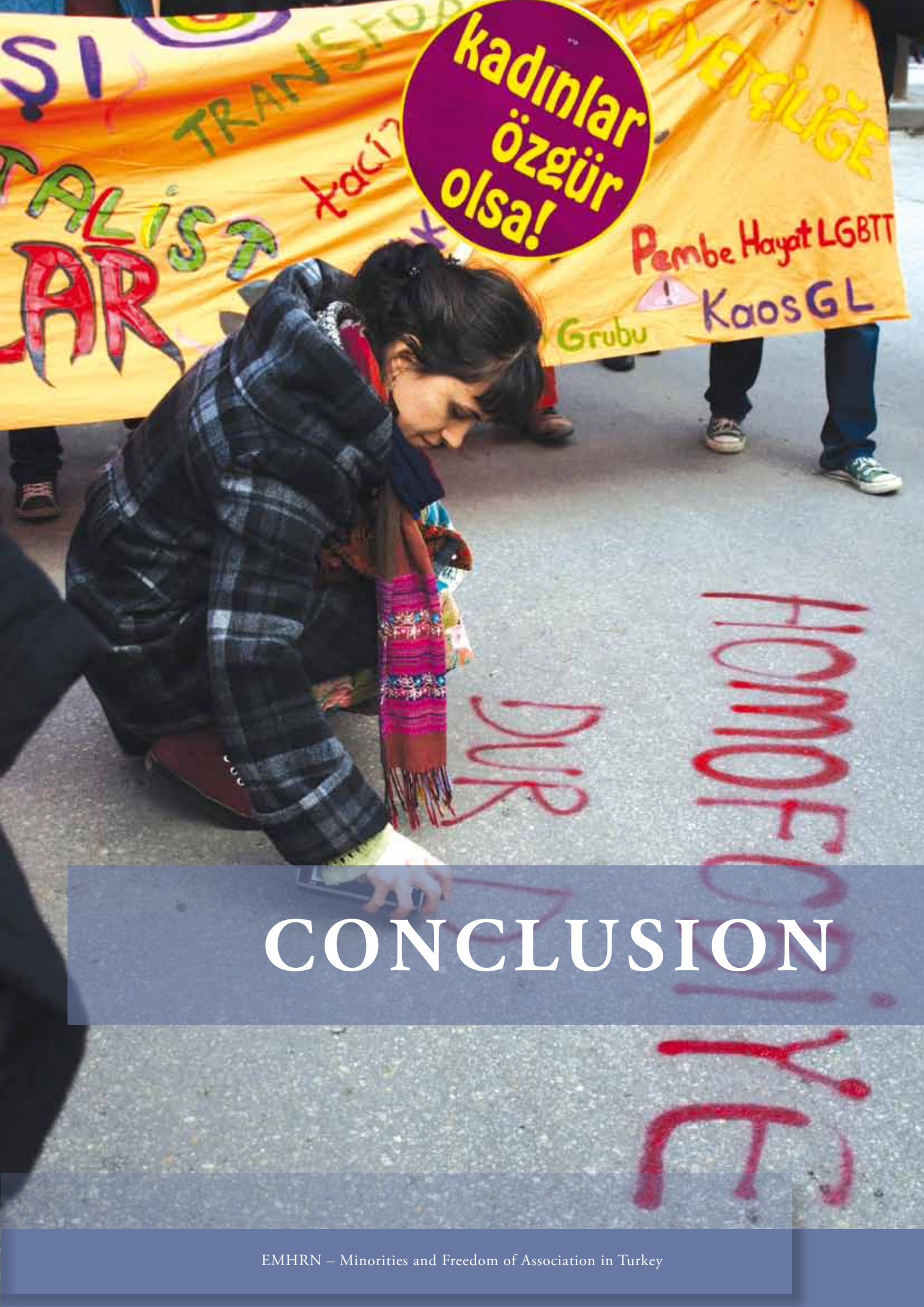
Reyhan Yalçındağ, member of Honorary Board of IHD states that in the past, procedures for closure were used frequently against their branches. Today, associations' members or board members of their branches are charged.²¹

It should be noted that while a case for closure is pending, associations cannot open a bank account, obtain a tax number and set up branches. Therefore they cannot function properly. Moreover, such cases cause stress and fear among their members and discourage individuals from becoming associated with others, establishing organisations, or becoming member of such associations.

Umut Güner and Ali Erol from KAOS-GL believe that they faced these bureaucratic and legal problems due to their sexual identity. They add that even today they do not feel that any LGBTT organisation is safe, as there is no law that protects them from discrimination openly and as the prevailing mentality in Turkey still denies their existence. They believe that investigations and proceedings for closure of LGBTT organisations are used as tools to suppress them and that they constitute infringements of their right to freedom of association.²²

21 Interview with Reyhan Yalçındağ, member of Honorary Board of IHD, Diyarbakır, 11 May 2011.

22 Interview with Umut Güner and Ali Erol, members of KAOS-GL, LGBT organisation. Istanbul, 13 February 2011.



CONCLUSION

Various laws have been adopted by the parliament of Turkey to bring human rights standards in line with international and European ones. Freedom of association is one of the freedoms that has improved significantly by law and in practice. Changes in the Law on Associations, namely the removal of some restrictions in the aims of associations, allowing the establishment of associations to promote minority cultures, to promote the use of languages other than Turkish in non-official activities, the forming of federations, and allowing cooperating with international organisations and fundraising from abroad, are all significant developments that have contributed to the exercise of freedom of association in general and by minorities. These changes have enabled minority groups and groups defending the rights of LGBTTs to form associations and cooperate with one another. Changes in the Law on Foundation, enabling non-Muslim foundations to acquire properties and claim some of the confiscated properties, are steps that have been taken towards ensuring equality in the exercise of this freedom.

Interviews show the important role that associations have played in raising awareness of the problems of minorities. They also show that associations are a tool for advocating for the rights of their members and the protection of minority cultures. Interviews also illustrate that in general, relationships with the Desks of Associations in the provinces have improved. Some minorities clearly express positive views of public officials and the guidance they have received in establishing and managing associations. Raids of offices, harassment and the jailing of members of associations have diminished compared to the 1990s. Developments in the field of freedom of expression have also opened more space for associations to act.

However, more remains to be done to meet international standards. Associations are still seen by the Turkish authorities as places of potential danger to the unity of the state which need to be kept under control. State policy on refusing recognition of some minorities or some minority rights, is illustrated by the treatment of associations and foundations. Minority communities cannot establish foundations to protect their rights and interests. An association can face closure simply for aiming to set up places of worship, if the religious group is one which is not recognised by the state. An association may similarly face closure for aiming to protect the rights of LGBTTs. Authorities still interfere with the right to freedom of association in different ways. Restrictions in the law are still interpreted widely. Implementation of law may differ from one place to the other. When many international institutions have been allowed to establish representation offices or branches in Turkey, some can be rejected without any satisfactory and legal explanation. There is no consistency between the decision of governorates and courts, leading to concerns about the impartiality of the judiciary and about the stability of reforms. Neither the Constitution nor domestic law prohibits discrimination on the grounds of ethnic origin and sexual orientation. There is no anti-discrimination law that defines and bans discrimination or provides effective legal and administrative remedies to the victims of discrimination, including associations. Non-Muslim foundations' problems related to claiming their confiscated properties have not yet been fully resolved.

The authority of the Desks of Associations to visit and check files of associations and impose fines is used excessively. An association working on political and social issues can be intimidated by the Desk of Associations simply for implementing a project that the Desk does not 'approve'. Members of some minority associations are interrogated by intelligence officers unofficially and thus unlawfully, or harassed by police or intelligence in different ways. Some are arrested and charged with anti-terror provisions due to legal activities they have carried out on behalf of the association.

Associations are subject to heavy fines for breaking very simple procedural rules, including delay in giving prior notice to authorities about receiving grants from abroad. These fines and paying taxes and national insurance on the same basis as profit making organisations, imposes a heavy financial burden on associations that are financially weak.

Participants of demonstrations, particularly those in southeast Turkey or those related to Kurdish issues, are subject to police violence. Simply attending a demonstration can result in periods of lengthy imprisonment, including minors.

Finally, it should be noted that a number of LGBTT, ethnic or religious minority associations still feel unsafe, fearing threat of facing proceedings for closure.

The democratic opening launched by the government could be an opportunity to improve the freedom of association of these groups. If some provisions in law need to be amended however, changes in law alone will not be adequate. In Turkey, a general problem regarding protection of human rights and freedoms is implementation of law reforms. Law enforcement figures, including police, prosecutors, judges and public officials can be reluctant to implement new laws and interpret them in favour of protection of rights and freedoms. Therefore, explaining changes in State policy and providing training for these persons can affect the implementation of law reforms in a positive manner. Interviews also show that a public speech from the Prime Minister or an official meetings to encouraging dialogue between minority groups and the government, can positively affect the opinion and behaviour of public officials and contribute to the implementation of law reforms.

The new constitution that is likely to be prepared following the election of the new parliament in June 2011, can play an historical role in the change of the State's approach to rights and freedoms. The new constitution and the government can show that one of the main duties of the State is to guarantee rights and freedoms to all its citizens on equal footing and take necessary measures to ensure the protection of these rights when necessary. As this message spreads, the mentality of everybody, including law enforcement bodies, will change in favour of human rights and freedoms.

RECOMMENDATIONS

Recommendations to the Government of Turkey

- Turkey must remove the reservations it has lodged on ratification of international treaties regarding minority rights. Turkey must extend the definition of minorities in line with international standards and clearly guarantee human rights and freedoms to people belonging to minorities on an equal footing in the new constitution.
- The new constitution must clearly ban discrimination, on the grounds of, among others, national origin, sexual orientation, ethnic origin, race, colour, religion, sect, or language, and oblige the State to take temporary positive measures when necessary for ensuring equality.
- A comprehensive anti-discrimination law that defines discrimination – including in the context of the exercise of the right to freedom of association – and effective remedies must be adopted. Public officers that discriminate against associations on the grounds listed above, must be held accountable for their actions.
- A provision guaranteeing the right to freedom of association to all, while especially mentioning the importance of protecting minorities and disadvantaged groups, should be added to the Law on Association.
- Article 101/4 of the Civil Code must be amended to enable the establishment of foundations that support members of certain communities, in particular, minority groups.
- The Law on Foundations must be amended to enable non-Muslim foundations to claim return of their properties that were confiscated and/or sold to third parties, or to benefit from compensation.
- Article 2/2 of the Anti-Terror Law and Article 220/6 of the Penal Code must be amended to ensure that persons are not charged under anti-terror provisions simply for attending demonstrations.
- The Directorate of Associations' power must be limited to standard financial controls.
- Burdensome bureaucratic requirements to establish and manage an association should be minimalised.
- State bodies must refrain from excessive control regarding grants receiving from abroad.

- Associations must be treated equally. Human rights associations should be able to benefit from the tax exclusion on the same basis as associations that have charitable status.
- Law enforcement officers, including police officers, prosecutors, judges and public officers working at the Directorate of Associations and the Desks (for the current situation) in provinces, should receive training on international standards related to freedom of association and the legitimate limitations.
- For the current situation, some staff of the Desk of Associations must be specially trained to guide associations. A special unit within these Desks can be formed to ensure dialogue with associations.

Recommendations to the EU and EU member states

- The EU must pay more attention to the respect of the right to freedom of association by minorities and groups defending the rights of LGBTTs.
- The EU must address the problems of these associations in its progress reports on Turkey.
- The EU can share the experience of its member states in law reforms and implementation.
- The EU can help the authorities in Turkey to develop and implement training programmes for law enforcement officers.
- The EU should design funding programmes for empowering minority associations, in particular young and grass root ones, and those established to promote LGBTT rights.
- Member states must also monitor the situation of freedom of association in Turkey, share experience in their countries with the authorities in Turkey and guide them in developing and implementing law reforms.

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