



## The Republic of Turkey

Joint NGO Submission to the Universal Periodic Review

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## **1. Introduction**

### *1.1. EuroMed Rights (EMR)*

Rooted in civil society, EuroMed Rights seeks to develop and strengthen partnerships between NGOs in the Euro-Mediterranean region, advocate for human rights values and develop capacities in this regard. Following the launch of the Barcelona Process in 1995, a group of human rights activists from both sides of the Mediterranean believed that they could make a positive impact on the human rights situation by creating a civil society network, linking up the Barcelona Process to Human Rights NGOs operating in the region.

EuroMed Rights acts as a regional forum and a pool of expertise for human rights NGOs and activists in the region. The organisation promotes capacity building, networking, cooperation and development of partnerships between its members in the region

### *1.2. Human Rights Association - İnsan Hakları Derneği (IHD)*

The oldest NGO established in Turkey for the advancement of human rights in the country. Human Rights Association struggles to protect the right to life, to abolish capital punishment, to find forcibly disappeared persons, to prevent executions. IHD observes violations, prepares reports within the framework of these observations and announces them to the public as well as lodging applications to relevant national and international institutions and organizations. Human Rights Association prepares annual reports about rights violations in the country. IHD carries out

orientation programs, prepares brochures and posters to raise human rights consciousness in the society.

### *1.3 Citizens Assembly – Yurttaşlık Derneği ((h)Ca)*

Citizens' Assembly (formerly Helsinki Citizens' Assembly) is a civil society organization working on fundamental rights and freedoms, peace, democracy and pluralism. The Helsinki Citizens' Assembly Turkey started its activities in 1990 in parallel with the initiative of the international Helsinki Citizens' Assembly and was established in Istanbul in 1993 as a non-governmental organization, recognized as an internationally operating organization by the Council of Ministers. Citizens' Assembly aims to introduce the basic rights and freedoms accepted in international agreements and outlined by universal standards into daily life, promote peaceful processes for the resolution of problems through mutual understanding dialogue and peace, and improve pluralist democratic bodies and civil society initiatives.

1.4 EuroMed Rights, IHD and (h)Ca are greatly concerned by legislative and extra-legal measures taken by the Republic of Turkey which curb civil society activism and the freedom of association.

1.5 In this document, EuroMed Rights, IHD and (h)Ca outline concerns related to the environment in which civil society activists and human rights defenders operate in the Turkey and discuss threats faced in the exercise of the freedoms of expression, association and assembly.

1.6 EuroMed Rights, IHD and (h)Ca are deeply alarmed by undue and arbitrary restrictions on freedom of expression, independence of the media and access to information.

1.7 EuroMed Rights, IHD and (h)Ca are concerned by ongoing restrictions on the free exercise of the right to freedom of assembly, including unwarranted use of excessive and sometimes fatal force to disperse nonviolent demonstrations.

## **2. Restrictions on freedom of association, expression or assembly or impediment to civil society activities**

2.1 Article 33 of the Constitution of the Republic of Turkey guarantees the right to freedom of association stating that, “Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission.”<sup>1</sup> Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is a state party, also guarantees the freedom of peaceful association.

Despite these commitments undertaken, the government of Turkey has continued to subvert the right to freedom of association through a combination of legislative restrictions and discriminatory targeting of organizations which advocate on sensitive issues.

2.2 Despite improved legislation concerning associations and foundations in 2004 and 2008, challenges and constraints continue, especially regarding secondary legislation and its implementation. In fact, no extensive reforms have been made since the major reform packages accepted in 2004 and 2008 improved the enabling environment of civil society. On the other hand, even before the coup attempt and the subsequent consequences of the state of emergency in 2016, shrinking civic space had been a concern particularly since 2013.

2.3 The enabling environment for civil society activity further deteriorated after the Gezi Park protests of 2013, which challenged the Government's urban development plans. The Government of Turkey tightened measures against political dissent and public activity it deemed undesirable. For instance, the Parliament passed a controversial security bill, the Law Amending the Law on Powers and Duties of the Police, Other Laws and Decrees, which is widely referred to as the “Internal Security Reform Package,” on March 27, 2015 despite fierce opposition. It broadened police power to conduct searches, use weapons, conduct wiretaps, detain individuals without a warrant, and remove demonstrators from sites of protest.

2.4 On July 18, 2018, the Turkish government lifted the nationwide state of emergency<sup>1</sup> that was imposed after a failed coup attempt on July 20, 2016. The state of relations between civil society and the Government deteriorated throughout 2016-2018<sup>2</sup>. In addition, Turkey officially transitioned to an executive presidential system after President Erdoğan took office on July 9, 2018. In this new system of government, which replaced a parliamentary system, the president alone holds the executive power granted by the Constitution. Since the elections, the central government has been reorganized through presidential decrees to determine the main

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<sup>1</sup> IHD 2018 report on Human Rights Violations in Turkey, <http://bit.ly/2Y8M1OB>

<sup>2</sup> Council of Europe, *EXPERT COUNCIL ON NGO LAW, OPINION ON THE IMPACT OF THE STATE OF EMERGENCY ON FREEDOM OF ASSOCIATION IN TURKEY*, <http://bit.ly/2NVcQBQ>

policymaking actors, their role in the new system, and how roles and responsibilities function in the policymaking process.

Presidential decrees have also brought changes concerning foundations and associations. Presidential Decree No. 17, published on September 13, 2018, amended Presidential Decree No. 1 of July 10, 2018 and abolished the Department of Associations and established a Directorate General for Relations with Civil Society under the Ministry of Interior. The regulation on the organization and duties of the Directorate General for Relations with Civil Society, which came into force on October 10, 2018, defined policy objectives to improve the civil society environment and established an advisory body, the Civil Society Consultation Council, as a new mechanism for participation. However, as of April 2019, the Council had not undertaken any initiatives.

2.5 Since 2018, the legal-political environment has not been beneficial for civil society in Turkey. Restrictions limiting freedom of association, assembly, and speech/advocacy remain. There is still no concrete definition of civil society or related legislation, policy documents, nor a single, overarching, and binding legislative framework to govern the relationship between CSOs and public institutions.

2.6 Presidential Decree No. 17, which was published on September 13, 2018, amended Presidential Decree No. 1 from July 10, 2018 and abolished the Department of Associations, establishing instead a Directorate General for Relations with Civil Society under the Ministry of Interior. The regulation on the organization and duties of the Directorate General for Relations with Civil Society, which came into force on October 10, 2018, puts forward targets to improve the civil society environment, including identification and development of strategies for relations with civil society, coordination and cooperation between the public and NGOs, the enhancement of the effectiveness of civil society organizations and the improvement of service quality. This regulation defines the Civil Society Consultation Council as a new mechanism for participation that will act as an advisory body to give direction to the policy agenda. The Council will bring together the Deputy Minister, representatives of the Directorate General for Relations with Civil Society, and representatives of universities, public institutions and organizations, and CSOs under the chairmanship of the Minister. There have, however, been no further developments regarding the establishment and operation of the Council.

2.7 The 2019 Presidential Annual Program, which was published on October 27, 2018, includes a separate section on CSOs and lists the measures and policies to be carried out by the end of December 2019. One of the objectives is related to accessing the membership information of natural and legal persons in CSOs through e-government applications. The Presidential Annual Program, in combination with the amendment to Article 83 of the October 2018 Regulation on

Associations, requires associations to report information about members through an e-application to the Ministry of Interior (DERBIS)<sup>3</sup> within 30 days. Associations must provide an array of information about their members, including identification numbers, name and surname, occupation, education status, and dates of membership in the association. This requirement is hampering participation in CSOs and NGOs activities all over the country, resulting in weakening and preventing engagement from citizens.

2.8 The government has cracked down on NGOs since the coup attempt<sup>4</sup>, summarily shutting down at least 1,500 foundations and associations and seizing their assets. The targeted groups worked on issues including torture, domestic violence, and aid to refugees and internally displaced persons. In June 2017, the chair of Amnesty International's Turkey branch was arrested on terrorism charges. In July 2017, a raid on a routine training session for human rights defenders resulted in the arrest of eight representatives from Turkey's major rights organizations, along with two foreign trainers. They were eventually released pending trial. Osman Kavala, perhaps Turkey's most prominent civil society leader and philanthropist, was detained in October 2017. He was formally arrested in November and remained in pretrial detention.

2.9 Union activity, including the right to strike, is limited by law and in practice. A system of representation threshold requirements makes it difficult for unions to secure collective-bargaining rights. Trade unions and professional organizations have suffered from mass arrests and dismissals associated with the state of emergency and the general breakdown in freedoms of expression, assembly, and association<sup>5</sup>.

2.10 Since 25 August 2018<sup>6</sup>, the peaceful gatherings of "the "Saturday Mothers", a group of women protesting the suspicious disappearances of their loved ones during the unrest in Turkey in the 80s and 90s, have been banned in Galatasaray square in Istanbul.

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<sup>3</sup> Dernekler Bilgi Sistemi – DERBIS, is openly violating the provisions set for by art. 33 of the Constitution of Turkey, art. 22 of the ICCPR as well as art. 11 of ECHR.

<sup>4</sup> *Supra*, note 1

<sup>5</sup> Equal Times, *In Turkey, the right to freedom of association and unionization remains under threat*, <http://bit.ly/2JM4siL>

<sup>6</sup> Reuters, *Turkey blocks decades-old mothers' vigil as freedoms suffer*, <https://reut.rs/2LUHKrq>

### 3 *Freedom of expression*

3.1 Article 26 of the Constitution of Republic of Turkey affirms the right to freedom of expression and thought. Article 21 of the ICCPR, to which Turkey is a state party, also guarantees freedom of expression and opinion. However, despite these protections, the government continues to invoke restrictive and overbroad legislation to arrest and imprison journalists and other government critics. Turkey maintains one of the highest rates of imprisoned journalists in the world<sup>7</sup>.

3.2 On 21 March 2018, the Grand National Assembly of Turkey passed a law placing online video services under the control of the broadcast media regulator, the High Council for Broadcasting (RTÜK). online video services will need to obtain a license in order to continue operating and, before the license is issued, an investigation that could involve the police and Turkey's National Intelligence Organization (MIT) will be necessary. The RTÜK is now in charge of monitoring content and imposing sanctions in the event of "irregularities." It will also be able to go to a judge to get websites blocked within 24 hours if they continue to operate without a license.

3.3 Authorities continued to arrest tens of thousands of journalists and other individuals for online commentary<sup>8</sup>. In January 2018, a wave of arrests came in response to criticism of Operation Olive Branch, a military operation in Afrin, Syria. The Turkish police associated nonviolent opinions against the operation with terrorism. The state also prosecuted or sought to prosecute those deemed to insult the President Erdoğan using social media, an offense punishable by up to four years in prison. According to statistics<sup>9</sup> released by the Ministry of Interior Affairs, security forces initiated investigations on almost 50,000 social media accounts during the coverage period for sharing what was deemed to be "terrorist" content online, resulting in over 20,000 "legal actions" taken.

3.4 Although the State of Emergency (SoE) was lifted in 2018, laws integrating SoE measures into ordinary law and giving additional exceptional powers to the Executive in the name of "counterterrorism," were adopted, resulting in the continuation of such abuses and the lack of space for the exercise of public freedoms. On 16 July 2018, the Minister of Justice Abdülhamit Gül declared that "the most persistent and determined fight against all kinds of terrorism will continue till the end." The new Law n°7145<sup>10</sup>, adopted on 31 July 2018<sup>11</sup>, not only enshrines SoE measures into ordinary law, but also undermines those constitutional guarantees that had

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<sup>7</sup> 2019 World Press Index, Reporters Without Borders

<sup>8</sup> Human Rights Watch, Turkey: crackdown on social media posts, <http://bit.ly/2LZpcqe>

<sup>9</sup> Ministry of Interior Affairs, official website, <http://bit.ly/2XYT9Jc>

<sup>10</sup>EMR-IHD-OMCT-FIDH, *Recommendations on the recent legislative amendments in Turkey integrating state of emergency restrictive provisions into ordinary law*, <http://bit.ly/2SiIXtX>

<sup>11</sup> IHD's view regarding Law no. 7145 regulating permanent State of Emergency, <https://ihd.org.tr/en/?p=1891>

remained unchanged in the new constitution. Another important concern is the amendment of Article 134 of the Code of Criminal Procedure, which gives authority to law enforcement to seize computer files without a judge's warrant, which only has to be requested ex post to the judges of the Criminal Peace Judgeships. In March 2017, the Venice Commission expressed numerous concerns over the jurisdiction and the practice of these Criminal Peace Judgeships.

3.7 Local authorities will be able to ban people from certain areas for 15 days. Local governors, appointed by the President, will be granted power to impose curfews or make some areas off-limits to the public.

3.8 The new Law legalizes, for three more years, the procedure for passport cancellation and mass dismissals of civil servants allegedly "having connection with terrorist organizations," posing a "threat to national security."

3.9 Academic freedom was highly affected by purges following the attempted coup d'état in July 2016. Schools affiliated with the movement of exiled Islamic preacher Fethullah Gülen—which the government has declared a terrorist organization and blamed for the 2016 coup attempt—have been closed, and teachers have been summarily dismissed for perceived leftist, Gülenist, or PKK sympathies. Fifteen universities have been closed, and more than 5,000 academics had lost their positions by early 2017. Many scholars are seeking positions overseas, but some have had their passports confiscated as they remain under investigation and are unable to do so.

3.10 Peace Academics is a group that unites more than 2,000 individuals demanding an end to the armed conflict in the south-east of Turkey and supporting peace in the country. They are among the 1128 signatories of a petition released in January 2016 calling for an end to violence in the region. In the petition, the signatories said that they were condemning both the state violence against the Kurds and the Turkish state's ongoing violation of its own laws and international treaties.

3.11 The abuses of anti-terrorism laws strangle freedom of expression in the country, where several provisions of the Turkish Criminal Code relating to terrorism and the Anti-Terrorism Law continue to generate some of the most serious violations of freedom of expression in the country. The legitimate exercise of freedom of expression had been criminalised as propaganda for terrorism or as proof of membership of terrorist organisations, notably in cases where no other material evidence exists of any link with a terrorist organisation and in the absence of any call or apology for violence. For example, a petition signed by academics calling for the end of violence



in south-eastern Turkey continues to result in many terrorism-related sentences being handed down by Turkish courts.

3.12 Article 7 of the Anti-Terror Law criminalizes “making propaganda for a terrorist organization.” On this basis, several signatories of the 2016 Peace Academics’ petition are now facing trial for peacefully expressing their dissent on the military operations conducted by the Turkish state in the summer of 2015. Further, the judiciary is accusing some of them of “denigration of the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of the state.” according to article 301 of the Turkish Penal Code.

#### ***4 Freedom of Assembly***

4.1 Article 34 of the Constitution of the Republic of Turkey protects the right to assembly and demonstration stating that, “Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.” Furthermore, article 21 of the ICCPR, to which Turkey is a state party, guarantees the right to freedom of peaceful assembly. However, despite these legal guarantees, there are a number of stringent limitations to this right. In addition, the free exercise of the right to peaceful assembly is severely undermined by unwarranted disruptions, arbitrary detention of peaceful protestors and the use of excessive force and sometimes-deadly force by security officials.

4.2 Turkey’s legal framework governing freedom of assembly also suffers from a number of deficits and inconsistencies which endow authorities with wide discretion to prohibit the free exercise of freedom of assembly. The Law on Meetings and Demonstrations (Law No: 2911) is the primary legal document regulating freedom of assembly in Turkey. According to Article 5 of the Regulation on the Implementation of the Law on Meetings and Demonstrations, a committee must be formed in order to plan a demonstration as well as notify state authorities of the time and place of the event within 48 hours. Article 24 of the Law on Meetings and Demonstrations further states that meetings and demonstrations which were not previously reported are subject to dispersal including the use of force. According to Article 32, persons who fail to heed demands to disperse can be sentenced to a period between six months and three years in prison.

4.3 The Regulation on the Implementation of the Law on Meetings and Demonstrations states endows the government with broad and excessive power to ban or postpone a proposed demonstration. Under Article 23 of the law, a governor or district governor can ban or postpone an assembly for up to two months in order to protect national security, public order, general health and general morality, other people’s rights and freedoms and to prevent a crime. The law further limits the number of venues and the period in which demonstrations can be held and

provides grounds for the state to unwarrantedly intervene in peaceful demonstrations. Article 3 of the law also permits a governor to predetermine where an assembly can be held.

### ***5 Harassment against Human Rights Defenders and Civil Society members***

5.1 Legal provisions are often used to criminalise the activities of Human Rights Defenders and members of Civil Society

5.2 The Law no. 7145, adopted in July 2018, increases the time period which reviews of pre-trial detention take place from 30 to 90 days, in blatant violation of the rights to liberty and security and to a fair trial. Moreover, it gives the gendarmerie and police officers in military locations the authority to perform preventive search without a judge's ruling, in violation of Article 20 of the Constitution.

5.3 In addition, the offence under Article 216 of the Turkish Penal Code "Provoking the Public to Hatred, Hostility," already commonly invoked to stifle peaceful dissent, will be adjudicated under the draconian anti-terror Law n°3713. Wide powers are granted to the government to ban protests or public assemblies and to restrict movement inside Turkey, in contradiction with Articles 19, 23, and 34 of the Constitution.

5.4 The most common charges against HRDs are falling under the Turkish Penal Code, articles 125, 216, 220§6-7, 299, 301, under the law no. 3713 (Anti-terror law) articles 6 and 7§1-2, and the Law on Meeting and Demonstration, articles 22, 23, 24.

### ***Recommendations***

In the current political environment, those who advocate for democratic freedoms and respect for human rights continue to be targeted, including protestors, unionists, journalists, lawyers, academics, and NGOs. Attacks against HRDs remain widespread: hundreds have been sentenced to prison or are still behind bars awaiting trial. Others have been subjected to judicial harassment, and some have seen their passports cancelled, banning them from travelling abroad. The label of "terrorist" has been widely used by authorities to crack down on dissenting peaceful voices,

relying on a vague and widely criticized<sup>12</sup> definition of terrorism in its anti-terror legislation. For these reasons:

- EMR, IHD and (h)Ca call on the Government of Turkey to create an enabling environment for civil society to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. The following rights should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect.

In light of this, the following specific recommendations are made.

- All due process guarantees in accordance with Article 14 of the ICCPR should be ensured for all detained persons. All human rights defenders and civil society activists detained for exercising their freedom of assembly, association, or expression should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment including administrative measures hampering their basic rights;
- Internal Security Package should be amended and the power of police should be reduced as well as subjected to judicial review. Furthermore, warrant/order from the public prosecutor, court/judge must be a pre-requisite;
- Law No 7145 must be abolished so as to eliminate State of Emergency' impact on daily life of all the citizens
- Turkish Penal Code should be amended and be in harmony with the relevant international human rights instruments;
- Civil society members and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;

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<sup>12</sup> U.N. Doc. A/HRC/37/50/Add.1 para. 68; U.N. Doc. A/HRC/35/22/Add.3 para. 17; U.N. Doc. A/HRC/33/51/Add.1 para. 39; U.N. Doc. A/HRC/29/15 recommendations 150.22, 150.42; U.N. Doc. A/HRC/29/37/Add.4 Recommendation A.3; U.N. Doc. CCPR /C/TUR/CO/1 para. 16.

- The definition of terrorism in Article 1 of the Anti-Terror Law should be amended in line with the principles set forth by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism in order to prevent misuse and wide interpretation of anti-terror laws to unjustly prosecute human rights defenders.
- Article 7/2 of the Anti-Terrorism Law (making propaganda for a terrorist organization) should be amended to ensure that only advocacy of incitement to violence is prohibited.