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TURKEY PART III

Drowned in Procedure, Sentenced to Fail: Administrative Harassment Against Civil Society in Turkey

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Cover photo: Members of the We Will Stop Femicides Platform and many women and LGBTI+ rights defenders gathered April 16, 2022 in Istanbul to protest the closure case against the Platform. The banner reads, «We Will Stop Femicides Platform Association cannot be shut down by unlawful cases.» (Photo by Erhan Demirtas/NurPhoto)

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I. Introduction

Turkey's crackdown against civil society intensified severely under the emergency rule that followed the failed coup d'état of July 2016. Many powers self-conferred by the executive branch under the two-year-long emergency rule became permanent even after the state of emergency was lifted in July 2018, and were further strengthened by the "Turkish type" presidential system,[1] which has eroded checks and balances. As part of a broader decline in human rights, rule of law, and democracy in Turkey, the freedom of speech, and freedom of assembly and association of human rights defenders ("HRDs") and dissidents are under constant attack, and the shrinking civic space presents serious challenges for the critical work of civil society.

Who are human rights defenders?

The term "human rights defender" refers to any individual who, individually or in association with others, acts peacefully in the name of individuals or groups, to promote, defend, and protect the human rights and fundamental freedoms recognised by the Universal Declaration of Human Rights, and guaranteed by various international human rights instruments. As a result of their active commitment in the defence of human rights, defenders are often subject to acts of reprisals, harassment, and violations of their rights by both state and non-state actors.

The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, better known as the Declaration on HRDs, adopted by the United Nations General Assembly on December 9, 1998, outlines the right of individuals "to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels," and the responsibility and duty of states to "protect, promote and implement all human rights and fundamental freedoms."

With the judiciary remaining under the influence of the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi - AKP*) and its coalition partner Nationalist Movement Party (*Milliyetçi Hareket Partisi - MHP*), judicial harassment against HRDs critical of the government

1 Venice Commission, Turkey Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on January 21, 2017, and to be Submitted to a National Referendum on April 16, 2017, CDL-AD(2017)005 (March 13, 2017). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e.

has become widespread.[2] Acts of judicial harassment against HRDs, such as arbitrary arrests and detention, criminal investigations, prosecutions, or convictions, have received plenty of attention and attracted international criticism, especially following Turkey's refusal to comply with the ECtHR's decision ordering the release of businessperson, philanthropist and HRD Osman Kavala.[3]

Administrative harassment, i.e. the use of administrative proceedings and sanctions by state bodies against HRDs and civil society in retaliation for and to obstruct and stigmatise their human rights work, has instead received less consideration since the end of the emergency rule, during which thousands of associations, foundations, and media institutions were shut down and public officers (including HRDs) dismissed by Council of Ministers-issued emergency decrees.[4] Yet administrative harassment that is reminiscent (and sometimes enabled by a legal remnant) of the emergency rule, albeit on a smaller scale, continues against individual HRDs as well as registered non-governmental organisations[5] (NGOs) (under Turkish law, associations and foundations). This harassment has drawn attention, especially following the recent enactment of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction ("Law No. 7262"), which, in spite of its name and purported objective, made several amendments to civil society-related legislation that go far beyond the law's legitimate scope.

Excessively formalistic legal norms and the wide discretionary powers granted to public authorities, together with the government's and pro-government media's increasingly hostile targeting of HRDs, lay the ground for the harassment, stigmatisation and suppression of civil society, and the criminalization of human rights work. Resulting administrative sanctions, including dismissals from public duty, exorbitant administrative fines, and the initiation of closure cases against associations, impact not only the HRD or NGO that the sanction is imposed against, but also wider civil society through a chilling effect. The lack of transparency

2 See TİHV, Fact Sheet: HRDs in Turkey Face Oppression, Obstacles and Challenges (March 1-August 31, 2021). Available at: https://en.tihv.org.tr/alternative-shadow-reports/fact-sheet-hrds-in-turkey-facing-excessive-oppression/; TİHV, Information Note on Repression, Obstacles and Challenges Faced by HRDs in Turkey (September 1-December 31, 2021). Available at: https://en.tihv.org.tr/alternative-shadow-reports/information-note-on-repression-obstacles-and-challenges-faced-by-human-rights-defenders-in-turkey-sept-1-dec-31-2021/. Judicial harassment is also used widely against opposition politicians, particularly executives and members of the Peoples' Democratic Party (Halkların Demokratik Partisi - HDP), in violation of the right to political representation and participation. See FIDH, Turkey: Harassment of Opposition Figures Must Stop (March 23, 2021). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-harassment-of-opposition-figures-must-stop; European Court of Human Rights ("ECtHR"), Case of Encu and Others v. Turkey, Application Nos. 56543/16 et al. (February 1, 2022). Available at: https://hudoc.echr.coe.int/tur#{%22fulltext%22:[%22encu%22],%22languageisocode%22:[%22FRE%22],%22itemid%22:[%22001-215340%22]}. This has culminated in a closure case against HDP, which is currently being heard before the Constitutional Court, whose independence remains under question. See Joint Statement on the Closure Case Against HDP (March 31, 2022). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-right-to-political-representation-peoples-democratic-party.

3 Kavala remains imprisoned since 2017, and the Council of Europe Committee of Ministers launched infringement proceedings against Turkey on February 2, 2022 due to Turkey's failure to comply with the court decision. See Ayşe Bingöl Demir, 2022: A Testing Year for the Council of Europe and Turkey, European Implementation Network (January 21, 2022). Available at: https://www.einnetwork.org/ein-voices/2022/1/21/2022-a-testing-year-for-the-council-of-europe-and-turkey. Despite this, Kavala was sentenced to aggravated life imprisonment for "attempting to overthrow the government" on April 25, 2022; Mücella Yapıcı, Çiğdem Mater, Hakan Altınay, Mine Özerden, Can Atalay, Tayfun Kahraman and Yiğit Ali Ekmekçi were sentenced to 18 years of imprisonment each and arrested immediately after the hearing. See The Observatory, Turkey: Sentencing to aggravated life imprisonment of Osman Kavala (April 29, 2022). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-sentencing-to-aggravated-life-imprisonment-of-osman-kavala. Recent examples of judicial harassment against HRDs and CSOs include the illegal police raid of İHD's Diyarbakır branch, criminal cases launched against İHD co-Chair Öztürk Türkdoğan, arbitrary detention and acts of ill-treatment against Boğaziçi University protesters Ersin Berke Gök and Caner Perit Özen, and the sentencing of woman rights defender and the Free Women's Movement (Tevgera Jinên Azad - TJA) Term Spokesperson Ayşe Gökkan. See https://www.fidh.org/en/region/europe-central-asia/turkey/.

4 The Observatory & İHD, A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society (July 2020). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-attack-on-freedom-of-assembly-undermines-work-of-human-rights.

5 For the purposes of this Report, NGOs are defined narrowly as non-profit organisations that hold legal status, while CSOs are understood to include a broad range of organisations and groups regardless of legal status, such as initiatives, professional associations, unions, and media.

and legal clarity, which weakens the principle of legal certainty to the detriment of those to whom the law applies, coupled with the judiciary's lack of independence (and hence ineffective legal remedies),[6] make administrative harassment impactful enough to severely obstruct the work of HRDs and civil society organisations (CSOs), unduly restricting the rights to freedom of assembly and association as well as freedom of speech, along with the internationally-recognised right to defend human rights. Moreover, administrative harassment sometimes precedes, follows or overlaps with judicial harassment, exacerbating its financial, psychological, and social impact on HRDs and their families.

This report ("Report") is the last in a series of three on shrinking civic space[7] published over the past two years by the Observatory for the Protection of Human Rights Defenders ("the Observatory," a partnership of the International Federation for Human Rights ("FIDH") and the World Organisation Against Torture ("OMCT")), and their member in Turkey, the Human Rights Association (*İnsan Hakları Derneği - İHD*). It aims to document and expose administrative harassment against HRDs in Turkey, while providing an overview of the domestic legislative and administrative framework that constitutes its legal basis. Building on the first two reports – on the rights to freedom of assembly and association – and on data collected through semi-structured remote interviews with HRDs, civil society representatives, and other relevant actors in Turkey in February-March 2022, the Report sheds light on the experience and impact of this less-studied administrative harassment, against the backdrop of a wider deterioration of human rights, and shrinking space for civil society, in Turkey. Although not intended as an exhaustive list of violations and/or legislation, the Report documents various administrative harassment cases against individual HRDs as well as registered NGOs, with a focus on the period following the entry into force of Law No. 7262 on December 31, 2020, revealing a pattern of systematic abuse against civil society. The Report also analyses, based on international human rights standards and the international legal framework pertaining to the protection of HRDs, the key domestic bodies of laws that lays the ground for administrative harassment, and the impact that its implementation has had on civil society, and on the rights to freedom of assembly and association in Turkey. Finally, the Report adds to recommendations set forth in the two previous reports for decision-makers at both the national and the international levels, including international organisations, international and regional human rights protection mechanisms, and international donors, on how to address the specific impact of administrative harassment, alongside other forms of harassment, on HRDs and CSOs in Turkey.

6 Commissioner for Human Rights of the Council of Europe Dunja Mijatović, Report, following her visit to Turkey from July 1-5, 2019 (February 19, 2020). Available at: https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e.

7 For the first report, focusing on the right to freedom of assembly, and the challenges faced by civil society organisations and HRDs in exercising this right in Turkey, see supra, note 4. For the second report, focusing on the freedom of association, and providing a detailed overview of the legal and practical challenges faced by civil society and HRDs in exercising this right in Turkey, see The Observatory & İHD, Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association (May 2021). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-ongoing-crackdown-poses-existential-threat-to-independent-26851.

II. Methodology

This Report builds on previous research on shrinking civic space in Turkey conducted by FIDH in the framework of the Observatory, and by its member organisations in Turkey, İHD and the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı - TİHV*). Data from interviews conducted in 2019, 2020 and 2021 were complemented with 14 semi-structured interviews conducted in February and March 2022 with four HRDs, seven NGO representatives, two media institutions, and a member of parliament. Interviews were anonymised unless the participant specifically requested otherwise and gave informed consent. Participants were selected in consultation with İHD and TİHV, and diversity was sought among respondents in terms of geographical location, areas of focus, and legal entity status (for NGOs). Given a new surge in Covid-19 cases in Turkey in the wake of the Omicron variant, all interviews were conducted online via videoconference. The Ministry of Interior Affairs ("MoI") Directorate General of Civil Society Relations and the Ministry of Culture and Tourism ("MoCT") Directorate General of Foundations did not respond to FIDH's letters requesting a meeting in the scope of this study.

Desk research included reports, statements, and urgent appeals published by the Observatory, İHD, and TİHV as part of regular monitoring and documentation activities, as well as publications by other rights-based NGOs and media in Turkey monitoring the rights to freedom of assembly and association and the protection of HRDs.

Research was conducted under the auspices of the three-year EU-funded programme "Comprehensive Support to Human Rights Defenders in Turkey," which FIDH manages together with an international NGO Consortium, including OMCT Europe, that was established in 2019 with the aim of supporting and building capacity for civil society and HRDs in Turkey through documentation, advocacy, capacity and network building, and sub-granting.

The Observatory would like to thank the individuals and institutions who participated in this study and shared their experiences, opinions and demands, as well as İHD and TİHV for their continued support throughout the activity of the Comprehensive Support to Human Rights Defenders in Turkey programme and other programmes.

III. International Standards on the Protection of HRDs

Given the critical role played by HRDs in protecting and promoting human rights, fostering equality, and strengthening democracy, states have a particular obligation to respect, protect and promote the rights of HRDs "apart from and in addition to" their general human rights obligations.[8] The Declaration on HRDs details the rights and freedoms of HRDs and the obligations of state and non-state actors in this respect. While not legally binding itself, the Declaration contains rights and principles recognized under various international and regional conventions that are binding for states, including the International Covenant on Civil and Political Rights ("ICCPR"), the Convention on the Elimination of All Forms of Discrimination against Women, and the European Convention on Human Rights.[9]

The Declaration reaffirms a number of rights and freedoms that are crucial for the defence of human rights, such as the rights to freedom of assembly and association, the right to freedom of expression, the right to criticise, the right to access information, and the right to access funding, among others.[10] Article 17 repeats the standards that need to be met for the restriction of these rights to be lawful, which have been well-established by the ECtHR as well: the limitation should be prescribed by law, should pursue legitimate aims – the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others – and be proportionate to those aims, and should be necessary in a democratic society.[11] The Special Rapporteur on the situation of human rights defenders elaborates that "[d]ifficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22 [of the ICCPR on the right to freedom of association]… in order to be admissible."[12]

In addition to negative obligations, the Declaration references states' positive obligations. The ECtHR also emphasises positive obligations, describing the state as "the ultimate guarantor of the principle of pluralism."[13] To that end, states shall "adopt such legislative, administrative and other steps as may be necessary to ensure the rights and freedoms referred to in the present Declaration are effectively guaranteed" (Article 2 of the Declaration). Article 12 notes states' duty to ensure that HRDs are protected from "violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action" due to their work as HRDs, including for opposing human rights violations attributable to the state and non-state actors, without discrimination. Article 9 reinforces HRDs' right to an effective remedy in case their rights and freedoms are violated. The obligation to provide an effective remedy "entails that the State ensures, without undue delay, a prompt and impartial investigation into the alleged violations, the prosecution of the perpetrators regardless of their status, the provision

8 Center for Justice and International Law (CEJIL), The International Legal Framework Applicable to Threats Against Human Rights Defenders: A Review of the Relevant Jurisprudence in International Law (July 2019), p. 40. Available at: https://cejil.org/wp-content/uploads/2021/10/Protocolo-Esperanza-FINAL-051021.pdf.

9 UN Special Rapporteur on the situation of human rights defenders, Commentary to 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 (July 2011). Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf.

10 On the interpretation of these principles by treaty bodies and regional courts, see supra, notes 8 & 9.

11 See supra, note 9; ECtHR, Guide on Article 11 of the Convention: Freedom of assembly and association (December 31, 2021). Available at: https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf.

12 Report by the Special Rapporteur on the situation of HRDs, Margaret Sekaggya, A/64/226 (August 4, 2009), para. 58. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/441/98/PDF/N0944198.pdf?OpenElement.

13 ECtHR, Case of Bączkowski and Others v. Poland, Application No. 1543/06 (May 3, 2007), para. 64. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80464%22]}.

of redress, including appropriate compensation to victims, as well as the enforcement of the decisions or judgements."[14]

Accordingly, not only should states refrain from unduly restricting rights of HRDs but should also protect HRDs from violence or other attacks by non-state actors due to their human rights work, and create a legal framework and safe environment conducive to the defence of human rights. Contrasting various domestic legal texts and examples of their implementation against the standards contained in the Declaration and other related international and regional standards, the next chapter demonstrates how administrative bodies in Turkey, under the influence of state officials and pro-government media that target HRDs critical of the government, and by utilising bodies of laws that are burdensome and lack legal clarity, harass HRDs – both as individuals and groups, including registered NGOs – and prevent them from accessing effective remedies, thus impeding the work of HRDs, violating their rights, and creating a chilling effect on the broader civil society.

14 Report by the Special Rapporteur on the situation of HRDs, Margaret Sekaggya, A/65/223 (August 4, 2010), para. 44. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/475/01/PDF/N1047501.pdf?OpenElement.

IV. Administrative Harassment Against Civil Society in Turkey: Establishing the Repressive Pattern

A. Administrative Harassment Against Registered NGOs

Several factors affect the occurrence, prevalence, and severity of administrative harassment against associations and foundations. Independent NGOs and media are targeted through stigmatising and criminalising statements by both state officials and pro-government media, which creates a climate of complacency that encourages administrative bodies to abuse their authority over NGOs. The legal and policy environment is not conducive to the defence of human rights and creates added vulnerabilities for NGOs vis-à-vis the authorities, since it is difficult to navigate and imposes an excessive and unjustified burden on NGOs to predict the laws' implementation, due to the extreme vagueness of the relevant legal provisions. The legal framework, coupled with a stigmatising narrative that damages NGOs' credibility and image within society, contribute to creating an environment that is hostile to HRDs and prevents them from carrying out much-needed human rights work. Moreover, authorities conduct increasingly lengthy and cumbersome audits, often resulting in disproportionate and unforeseeable sanctions. These are examined in turn below.

a. "NGOs faithful to our national sensitivities" vs. "groups connected with foreign circles"[15]: Stigmatisation of Independent NGOs and Foreign Funding

Recent years in Turkey have seen the criminalisation and stigmatisation of independent rights-based NGOs, along with the simultaneous rise of government-organised NGOs (GONGOs).[16] State cooperation with GONGOs – which are also prioritized for state funding that is inaccessible to independent NGOs – and their role in policy-making have strengthened, aiming to mask Turkey's crackdown against independent civil society and promote "the alternative human rights narrative espoused by the government and authorities."[17]

This discourse distinguishing between NGOs is used to discredit organisations critical of the state, damage their reputation in society, and legitimise their repression and attacks against them. Highest-level state officials and pro-government media have regularly and publicly targeted independent HRDs; human rights, women's rights, and LGBTI+ rights organisations; environmental organisations; and trade unionists, which in many instances has led to judicial harassment, attacks and even killings, and against which no effective remedies are available.[18] Interviews with NGO representatives demonstrated that these smear campaigns stigmatise rights-based NGOs and can lead to judicial and administrative harassment, while creating a chilling effect on civil society.

15 Numan Kurtulmuş, Deputy Chair of AKP and Istanbul MP, stated in his speech during budgetary discussions in the Parliament on December 17, 2021 that "…Turkey appreciates CSOs that are faithful to Turkey's national sensitivities. … In addition to CSOs that are faithful to our national sensitivities, we know that there are unfortunately some groups that are connected with some tutelary powers, some foreign circles, trying to poison Turkey's civil society space." Grand National Assembly of Turkey, Transcription Journal, 39th Session (December 17, 2021). Available at: https://www5.tbmm.gov.tr/tutanak/donem27/yil5/ham/b03901h.htm.

16 See "Counter Human Rights Narratives and Pro-Government Civil Society" in supra, note 7; supra, note 6.

17 EuroMed Rights, The Rise and Impact of Government-Organised Non-Governmental Organisations (GoNGOs): another tool of repression of independent civil society (February 2021), p. 34. Available at: https://euromedrights.org/wp-content/uploads/2021/02/GoNGOS-Report_Final.pdf. This is perhaps demonstrated best by the case of Turkey's first women's GONGO, Women and Democracy Association (Kadın ve Demokrasi Derneği - KADEM), throughout and following Turkey's withdrawal from the Istanbul Convention in March 2021. See ibid.

18 See "Stigmatisation and Discrediting of Civil Society Actors" in supra, note 7; supra, note 4, fn. 7.

The Minister of Interior Affairs Süleyman Soylu's targeting of human rights NGOs in his public statements are well documented.[19] The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, also noted following her visit to Turkey in July 2019 that Soylu has been "publicly labelling persons as terrorists before any judicial decision establishing guilt in disregard of the principle of presumption of innocence, which is particularly worrying coming from the hierarchical superior of law enforcement forces."[20] Most recently, Soylu attacked İHD in a speech he delivered at the parliament in February 2021, wishing that death and evil befall the organisation.[21] This attack, followed by intense coverage and further escalation by pro-government media, created a threat to the safety of the organisation, its executives, members, and staff: "This statement created a serious concern for life for both [executives] and association employees and members, and it also created a concern that being affiliated with İHD is something to be targeted, that they would be harmed."[22] Shortly thereafter, İHD co-Chair Öztürk Türkdoğan was arbitrarily detained, and later released under judicial control. Türkdoğan is currently facing trial on the charge of "insulting a public officer" (in this case, the allegedly insulted public officer is Soylu himself) due to his work as an HRD, which was filed against him as a result of an administrative audit of İHD conducted by the MoI in 2020.[23] Türkdoğan was recently acquitted of the charge of "membership in an armed organisation," while two investigations were launched against him for "degrading the Turkish nation, state of the Turkish Republic and institutions and organs of the state" (which have not gone to trial).[24] İHD co-Chair Eren Keskin, who had faced a total of 143 criminal cases,[25] was sentenced to six years and three months of imprisonment for "membership in an armed organisation" in February 2021; the court reasoned that "the understanding and concept of true and national human rights" should be favoured.[26] The verdict was upheld by the regional court in April 2022.[27]

While the majority of rights-based NGOs in the Kurdish region as well as NGOs that document and report rights violations against the Kurdish population are labelled regularly as terrorists (often leading to judicial harassment),[28] others, particularly women's rights or LGBTI+ rights NGOs critical of the government, are increasingly being targeted by state officials and pro-government media for "receiving foreign funding," which can lead to administrative harassment. While administrative harassment is not unique to NGOs that receive foreign funding, there appears to be a connection with smear campaigns that include

19 İHD, Press Statement for Immediate Release: Interior Minister Süleyman Soylu's Public Statements (June 29, 2018). Available at: https://ihd.org.tr/en/press-statement-for-immediate-release-interior-minister-suleyman-soylus-public-statements/.

20 Supra, note 6, para. 150.

21 The Observatory, Turkey: Stigmatisation and targeting of İHD must stop! (February 26, 2021). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-stigmatisation-and-targeting-of-the-human-rights-association.

22 Interview no. 12 with İHD, online, February 25, 2022.

23 Joint Statement, Human rights advocacy cannot be put on trial (February 22, 2022). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-human-rights-advocacy-cannot-be-put-on-trial.

24 The Observatory, Turkey: Arbitrary detention and subsequent release of İHD Co-Chairperson Mr. Türkdoğan (March 26, 2021). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-detention-and-subsequent-release-of-ihd-co; the Observatory, Turkey: Acquittal of Mr. Öztürk Türkdoğan (April 21, 2022). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-acquittal-of-mr-ozturk-turkdogan.

25 Keep the Volume Up, Eren Keskin. Available at: https://www.sessizkalma.org/en/defender/eren-keskin.

26 Bianet, Özgür Gündem trial: Reference to 'national human rights' in justified ruling (March 30, 2021). Available at: https://bianet.org/english/law/241579-ozgur-gundem-trial-reference-to-national-human-rights-in-justified-ruling.

27 İHD, Statement on Eren Keskin's Conviction (April 16, 2022). Available at: https://ihd.org.tr/en/ihd-statement-on-eren-keskins-conviction/.

28 See "HRDs based in the South-East" in supra, note 7. See also the Saturday Mothers/People, a group of HRDs demanding truth and justice for their forcibly disappeared family members since 1995, through weekly vigils in Istanbul's Galatasaray Square, who were targeted by Soylu and continue to be judicially harassed. "Box #1 – Saturday Mothers/People's Weekly Vigils" in supra, note 4; The Observatory, Turkey: Judicial harassment of the Saturday Mothers/People movement (April 25, 2021). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-the-saturday-mothers-people-movement.

a focus on financial resources. As in other countries such as Hungary, Poland and Romania,[29] these smear campaigns are closely related to the anti-gender movement in Turkey, which advocated for Turkey's withdrawal from the Istanbul Convention.[30]

Demonstrators take part in a protest against Turkey's withdrawal from the Istanbul Convention in Ankara on July 1, 2021, when Turkey's withdrawal took effect officially. The banner reads, "We do not give up on the Istanbul Convention." (Photo by Adem ALTAN/AFP)

Under Turkish law, associations and foundations may receive funding from abroad on the condition that they notify the MoI and MoCT, respectively, before spending it. However, NGOs that receive foreign funding are often accused of spreading the ideology of Western donors and "foreign powers" that are trying to undermine the Turkish government and "national values."[31] For instance, in February 2021, Soylu alleged that Europe and the USA provided 12 million USD in funding to LGBTI+ organisations in Turkey "to market LGBT" and "destroy Turkey."[32] In March 2022, at an event organised for provincial civil society relations directorates, Soylu

29 European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, Backlash in Gender Equality and Women's and Girls' Rights (June 2018). Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604955/IPOL_STU(2018)604955_EN.pdf.

30 Alev Özkazanç, The new episode of anti-gender politics in Turkey, LSE, May 20, 2019. Available at: https://blogs.lse.ac.uk/gender/2019/05/20/new-episode-anti-gender-turkey/; Berfu Şeker & Ezel Buse Sönmezocak, Withdrawal from the Istanbul Convention: War on Gender Equality in Turkey, Freedom House (June 2021). Available at: https://freedomhouse.org/sites/default/files/2021-06/06292021_Freedom_House_Turkey_Policy_Brief-2-Withdrawal-from-the-Istanbul-Convention.pdf.

31 The Special Rapporteur on the situation of human rights defenders observed that "[a] common accusation directed in particular at those working on women's rights, gender issues, and LGBT rights, is the assertion that these defenders are somehow advocating or attempting to import 'foreign' or 'Western' values which contradict national or regional culture. State agents or representatives are often alleged to be responsible for such stigmatization." Report by the Special Rapporteur on the situation of HRDs, Margaret Sekaggya, A/HRC/16/44 (December 20, 2010), para. 85. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/70/PDF/G1017870.pdf?OpenElement.

32 Cumhuriyet, Süleyman Soylu'dan Boğaziçi açıklaması: Rektör seçimlerinin demokratik olması mı gerekiyor? (February 2, 2021). Available at: https://www.cumhuriyet.com.tr/haber/suleyman-soyludan-bogazici-aciklamasi-kayyim-rektor-atadiniz-demek-fasist-bir-yaklasim-1810862.

claimed this amount to be 20 million USD; he also distinguished between "good" and "evil" understandings of civil society and claimed that civil society is used in defence of "LGBT, FETÖ, PKK, DHKP-C," which are "rooted abroad."[33] These statements "[contribute] to the perception that defenders are legitimate targets for abuse by State and non-State actors."[34] A prominent example of this was the targeting of organisations that received funding from the Open Society Foundations (OSF), and their ensuing tax audits.[35] A similar accusation is directed at foreign media that provide Turkish language coverage, as well as local media that receive foreign funding, with a GONGO even publishing a list of journalists and international news outlets, which was criticised by media freedom groups as a "blacklisting" effort.[36]

In July 2021, media outlets as well as NGOs that previously received funding from the Chrest Foundation, based in Texas, USA, were subjected to a smear campaign similar to that concerning OSF. Sparked by a debate on social media concerning Turkey's refugee policies, a media outlet that received funding from the Chrest Foundation was targeted by a secular-nationalist news portal.[37] The report also included information on other media organisations and NGOs that received funding from the donor, which was already publicly available on the websites of both the donor and the beneficiaries. The piece was picked up widely by pro-government media, and led to serious consequences for both the associations and media organisations, in the form of audits and problematic bills (for media, see Box #1, below). One respondent stated that this smear campaign "became a threshold for more frequent waves criminalising civil society or media that work with external funding, and for this to leap from popular space to the legislative and executive."[38]

Soon after, MoI auditors conducted administrative audits of the majority, if not all, of the associations that received funding from the Chrest Foundation, questioning the foreign funding they received.[39] On December 3, 2021, the Directorate General of Civil Society Relations of the MoI published a tweet from its official account, noting media coverage of the donor and stating that "there are reports that [the donor] provided hundreds of thousands of dollars in donations to tens of media agencies and NGOs operating in Turkey."[40] The tweet named some of the associations that received funding and were subjected to MoI audits; most of those named are think tanks, media and journalism associations, and research organisations. The tweet also mentioned that "some of these associations" failed to comply with legal, administrative, and financial obligations, and would be sanctioned.

HRDs in Turkey often operate with very limited resources, considering that most independent NGOs do not have access to state funding, and that the legal framework regarding aid collection

33 T24, Soylu yine LGBTİ+'ları hedef aldı: Bizim böyle zararlı alışkanlıklarımız yok, hepsinin kökü dışarıdır (March 31, 2022). Available at: https://t24.com.tr/haber/soylu-yine-lgbti-lari-hedef-aldi-bizim-boyle-zararli-aliskanliklarimiz-yok-hepsinin-koku-disaridir,1024774. The latter three are listed as terrorist organisations by Turkey.

34 Supra, note 9, p. 16.

35 See "Structural Challenges: Access to Funding and Resources" in supra, note 7. Notably, organisations that received funding from OSF were also named in the Gezi Park indictment even though no criminal action could be attributed to them: "The [Financial Crimes Investigation Board] reports seem to be included in this indictment only to show who received money from Open Society Foundation in Turkey and Anadolu Kültür [a cultural institution founded and led by Kavala]. In the absence of any evidence pointing to criminal use of funds, it could be interpreted as serving the political aim of discrediting those who received money from either source." Human Rights Watch, Turkey: Baseless Charges Over Landmark 2013 Protests (March 25, 2019). Available at: https://www.hrw.org/news/2019/03/25/turkey-baseless-charges-over-landmark-2013-protests.

36 Diego Cupolo, Pro-state think tank targets foreign media in Turkey, Al-Monitor (July 8, 2019). Available at: https://www.al-monitor.com/originals/2019/07/pro-state-think-tank-turkey-targets-foreign-media.html.

37 Bianet, Turkey's broadcast regulator says foreign-funded media can cause "national security problems" (July 26, 2021). Available at: https://bianet.org/english/media/247671-turkey-s-broadcast-regulator-says-foreign-funded-media-can-cause-national-security-problems.

38 Interview no. 7 with media representative, online, February 17, 2022.

39 Amnesty International, Turkey: Terrorism Financing Law has Immediate "Chilling Effect" on Civil Society, Impact of Law No. 7262 on Non-Profit Organizations (October 2021). Available at: https://www.amnesty.org/en/documents/eur44/4864/2021/en/.

40 Directorate General of Civil Society Relations of the MoI (December 3, 2021). Available at: https://twitter.com/icisleriSTi/status/1466687526467424260. Despite the MoI's claim otherwise, the funding provided was grants, not donations.

is restrictive.[41] This leaves foreign funding as the only option for many NGOs to continue their work.[42] Principle 7 of the Joint Guidelines on Freedom of Association provides that "Associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities."[43] These smear campaigns, which even the Minister and Ministry of Interior Affairs participate in, stigmatise NGOs that receive foreign funding, and the ensuing administrative audits harass NGOs in retaliation for their lawful activities, thus violating the right of associations to seek funding.

Moreover, this creates a chilling effect on civil society, with one NGO representative stating, "It is Chrest today and something else tomorrow… We are all aware of this."[44] This chilling effect places rights-based NGOs, many of which received funding from abroad at some point, under a state of constant threat and worry, and creates potential reluctance on NGOs' behalf in seeking foreign funding for fear of being targeted and harassed. It also isolates targeted organisations, as NGOs fear that collaborations could lead to "spill-over" harassment.[45]

These incidents also highlight the role played by media, the vast majority pro-government, in the stigmatisation of rights-based NGOs, and which is often followed by administrative and/or judicial harassment (for another striking example, see Box #4, below). That media have targeted NGOs using information the NGOs themselves made publicly available has had a broader impact on transparency and visibility in civil society, as organisations become more reluctant to share information that can be picked up by pro-government media and used against them.[46] The Declaration on HRDs lists obligations of non-state actors, including media, which should "refrain from taking any measures that would result in preventing defenders from exercising their rights" and instead contribute to the promotion and protection of human rights.[47] That independent media face an increasingly restrictive environment due to its rights-based reporting, while there remains no effective remedy against smear campaigns by pro-government media, illustrates yet another contrast created by the government to legitimise its attacks against its critics.

Box #1 – The bill on foreign funding that threatens media

The smear campaign against organisations that received funding from the Chrest Foundation has led to a bill that threatens the freedom of the press. Shortly after the smear campaign started, the Presidency's Communication Director Fahrettin Altun hinted at regulations governing media outlets funded by foreign states or organisations,[48] which was followed by a statement by the Radio and Television Supreme Council that foreign-funded media can cause "national security problems."[49] In August 2021, the MHP submitted a bill to the parliament titled "Bill on Certain Activities Funded by Foreign Sources," which requires "anyone who would like to engage in activities concerning transfer of information in any print, visual or audio media such as journalism, publishing,

41 See Box #2 – Discrimination in aid collection and "public benefit" status, below.
42 See "Structural Challenges: Access to Funding and Resources" in supra, note 7.
43 Venice Commission & OSCE/ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046 (December 17, 2014). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e#:~:text=The%20Guidelines%20aim%20to%20ensure,facilitating%20their%20aims%20and%20activities.
44 Interview no. 5 with NGO representative, online, February 10, 2022.
45 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association (Kaos GL Derneği), online, February 18, 2022.
46 Ibid.; "Stigmatisation and Discrediting of Civil Society Actors" in supra, note 7.
47 Supra, note 9, p. 11.
48 Bianet, "Regulation for media" statement by Presidency's Communications Director (July 22, 2021). Available at: https://bianet.org/english/politics/247542-regulation-for-media-statement-by-presidency-s-communications-director.
49 Supra, note 37.

commentary or opinion shaping" and who receive direct or indirect foreign funding, to register a "Foreign Headquarters Representative" with the MoI, and brings additional reporting obligations as well as public disclosure obligations.[50] The bill further provides for monetary fines and imprisonment for up to five years for those who do not comply with its provisions. The vague wording of the bill's scope raises the possibility of its implementation against NGOs, in addition to media outlets.

The context in which the bill was introduced suggests that its intention is to further stigmatise and even criminalise media outlets and journalists that are critical of the government, and to aggravate the demonisation of civil society actors that receive international funding.[51] Strikingly, this bill also coincided with another draft law introduced by the MHP that adds to Turkey's already problematic social media law,[52] by introducing prison sentences for "fake news", and a joint AKP-MHP bill submitted shortly thereafter includes further restrictions on press freedom and social media.[53] While none have been legislated yet, the fact that these bills are introduced is enough to create a chilling effect.

The bills threaten to add criminal provisions to numerous administrative policies and practices that already severely restrict the freedom of the press. These include the weaponization of ad penalties (i.e. bans on receiving public advertising funds) against critical newspapers by the Press Advertisement Agency[54] and the Presidency Communications Directorate's arbitrary decisions concerning the issuing and renewal of press accreditation.[55] In February 2022, the Radio and Television Supreme Council decided to enforce a regulation granting it the authority to inspect the internet newscasts of foreign news broadcasters.[56] The timing of this intervention – three years after the regulation came into force and shortly after intense debates on foreign funding – indicates that the hostile environment for independent media is also encouraging administrative bodies to use pre-existing legal frameworks against media institutions that receive foreign funding.

A media outlet (incorporated as an NGO) stated, "[The legal framework] has not impacted us administratively, but just the fact that they are on the table… these types of threats exacerbated the already heavy psychological burden of being a dissident. They put forward what could happen in the future."[57] They further noted that this hostile environment stigmatises them in the eyes of both readers and news sources.[58] These examples demonstrate that administrative harassment is used as a tool to silence independent media, in addition to NGOs.

50 Bill on Certain Activities Funded by Foreign Sources (August 6, 2021). Available at: https://www2.tbmm.gov.tr/d27/2/2-3778.pdf.

51 Venice Commission, Report on Funding of Associations, CDL-AD(2019)002 (March 18, 2019). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)002-e.

52 Reporters Without Borders, Tighter control over social media, massive use of cyber-censorship (October 1, 2020). Available at: https://rsf.org/en/news/tighter-control-over-social-media-massive-use-cyber-censorship-0.

53 Bianet, Report: Turkey to establish regulatory body for social media (August 17, 2021). Available at: https://m.bianet.org/english/media/248915-report-turkey-to-establish-regulatory-body-for-social-media; Bill on Amendments to the Law No. 5651 and Other Laws (February 2, 2022). Available at: https://www2.tbmm.gov.tr/d27/2/2-4130.pdf; Bill on Amendments to the Press Law and Other Laws (May 26, 2022). Available at: https://www2.tbmm.gov.tr/d27/2/2-4471.pdf.

54 Bianet, Five newspapers got 88 percent of ad penalties by Press Advertising Agency (February 8, 2021). Available at: https://bianet.org/english/media/238926-five-newspapers-got-88-percent-of-ad-penalties-by-press-advertising-agency; Bianet, Evrensel newspaper hasn't received public ads for over 900 days (March 9, 2022). Available at: https://bianet.org/english/media/258836-evrensel-newspaper-hasn-t-received-public-ads-for-over-900-days.

55 Reporters Without Borders, Turkey using press accreditation to pressure journalists (June 28, 2021). Available at: https://rsf.org/en/news/turkey-using-press-accreditation-pressure-journalists.

56 Bianet, RTÜK orders international news websites to apply for a license within 72 hours (February 9, 2022). Available at: https://m.bianet.org/english/media/257489-rtuk-orders-international-news-websites-to-apply-for-a-license-within-72-hours; Bianet, Turkey may block access to DW, VoA as Euronews allowed to operate without licensing (April 13, 2022). Available at: https://bianet.org/english/media/260444-turkey-may-block-access-to-dw-voa-as-euronews-allowed-to-operate-without-licensing.

57 Interview no. 7 with media representative, online, February 17, 2022.

58 Ibid.

HRDs interviewed for this study underlined that inconsistent policies by the European Union ("EU"), which is the source of most foreign funding available to NGOs in Turkey, also contribute to their stigmatisation in the eyes of the public. Many respondents also pointed out that the EU's increased allocation of funds to civil society in Turkey over the years appears to be closely related to the immigration deal it signed with Turkey in 2016, and which was criticised by human rights group for "sen[ding] a message that protection for refugees can be commodified, outsourced, and deflected."[59] Participants perceived these funds as the EU's attempt at "compensating" for the immigration deal, which has strengthened authoritarianism in Turkey, including through the de-prioritisation of human rights in EU-Turkey relations.[60] EU and member states' migration policy, which prioritises geopolitical interests at the expense of human rights, and outsources responsibility for migration management to non-EU countries with poor human rights records, such as Turkey, reinforces this perception among HRDs in Turkey.[61] They noted contradictions between EU policy and practice, and hinted at the fact that these could fuel "the perception that the human rights struggle has become the Western vehicle for colonisation" in the eyes of the society, a stance that has already been instrumentalised by the government.[62] Coordinated attacks on social media against refugee rights defenders clearly demonstrate this link, with many HRDs who object to Turkey's human rights violations against refugees – such as violations of the principle of non-refoulement[63] – immediately labelled as foreign-funded mouthpieces for the EU, seeking to defend the 2016 deal.

b. Murky Waters: Legal, Financial, and Administrative Obligations of NGOs under Turkish Law

"The system forces you to organise under an association, and then drowns you in procedure."[64]

Even though there is no legal barrier against human rights work by unregistered groups, several disadvantages of lacking legal personality – importantly, in access to funding and resources – push groups towards registering their organisations. Turkish law limits non-profit legal personality to associations and foundations. Given the very costly and cumbersome process of establishing a foundation, most groups set up associations. An association requires a minimum of seven people to set up, and a minimum of 16 people to continue functioning.[65] This threshold alone is burdensome, and contrary to international standards, considering that the Special Rapporteur on the rights to freedom of peaceful assembly and of association considers a minimum of two persons for establishing an association to be best practice.[66]

59 Human Rights Watch, Q&A: Why the EU-Turkey Migration Deal is No Blueprint (November 14, 2016). Available at: https://www.hrw.org/news/2016/11/14/qa-why-eu-turkey-migration-deal-no-blueprint. See also Nils Muiznieks, Stop Your Backsliding, Europe, The New York Times (March 14, 2016). Available at: https://www.nytimes.com/2016/03/15/opinion/stop-your-backsliding-europe.html?searchResultPosition=2.

60 Interview no. 5 with NGO representative, online, February 10, 2022; EuroMed Rights, Human Rights or No Deal: The "Modernisation" of the EU-Turkey Customs Union (June 24, 2021). Available at: https://euromedrights.org/publication/human-rights-or-no-deal-the-modernisation-of-the-eu-turkey-customs-union/. In the same direction, see TİHV, Türkiye'de İnsan Hakları Mücadelesinin Değişim Hatları: İnsan Hakları Derneği Örneğinde Uluslararası Mekanizmalar, Yerelleşme ve Dayanışma (November 2021), p. 68. Available at: https://tihv.org.tr/wp-content/uploads/2021/12/I%CC%87nsan_Haklari_Mucadelesinin_Degisim_Hatlari.pdf.

61 Judith Sunderland, Europe's Deadly Border Policies, EUObserver (October 27, 2021). Available at: https://euobserver.com/opinion/153345; UNHCR, Stop violence at European borders and protect refugees (February 21, 2022). Available at: https://news.un.org/en/story/2022/02/1112342.

62 Interview no. 1 with NGO representative, online, February 3, 2022.

63 Syrians for Truth & Justice, Turkey Continues to Forcibly Return Refugees, Ignoring International Warnings that Syria is Still Unsafe (February 14, 2022). Available at: https://stj-sy.org/en/turkey-continues-to-forcibly-return-refugees-ignoring-international-warnings-that-syria-is-still-unsafe/.

64 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.

65 Civil Society Development Centre (STGM), Outlook of Freedom of Association in Turkey-II (February 2022). Available at: https://www.stgm.org.tr/sites/default/files/2022-02/outlook-of-freedom-of-association-in-turkey-ii_0_2.pdf.

66 Report by the Special Rapporteur on the situation of HRDs, Margaret Sekaggya, A/HRC/20/27 (May 21, 2012), para. 54. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/135/86/PDF/G1213586.pdf?OpenElement.

Associations and foundations are subject to various laws and regulations that govern their daily functioning, including the Civil Code, the Law and Regulation on Associations, the Law and Regulation on Foundations, the Law on Income Tax, the Law on Aid Collection, and the Criminal Code.[67] These bodies of laws impose several obligations concerning bookkeeping and reporting, with administrative and even criminal sanctions for non-compliance. This section discusses the overall impact of the legal, financial, and administrative framework governing NGOs doing human rights work, and highlights certain legal provisions that respondents of this study pointed to as restricting the right to freedom of association.

All associations are required by law to keep a minimum of four different sets of financial and administrative books (more if the association's income is higher than 500,000 TRY (approx. 32,100 EUR), or if they have a "public benefit" status, see Box #2, below) and foundations five sets. These set of books bring a great deal of paperwork for day-to-day operations that is not suited to the fast-paced work of rights-based organisations, particularly after Covid-19, during which many organisations did not have regular access to their headquarters, where the physical books must be kept.[68] According to representatives of both associations and foundations, daily administrative affairs may seem trivial, "but they snowball on you."[69]

Keeping these books is challenging for persons who do not have a legal or accounting background. Representatives of both associations and foundations noted that they have no choice but to work with an accountant for their financial bookkeeping, especially since fines for fiscal non-compliance are quite high.[70] This imposes an additional financial burden on already underfunded organisations. NGOs often also need qualified people to keep administrative books, such as the board of directors' decision book or the document registration book, given complicated rules and a lack of accessible guidelines on how to keep them. For organisations that cannot afford to hire administrative employees, full compliance with administrative obligations becomes almost impossible; this problem disproportionately impacts NGOs in smaller cities, as well as NGOs established by marginalised groups that have historically and systematically been deprived of access to education or employment (and thus lack previous experience with similar administrative affairs). It also disproportionately affects NGOs in Kurdish cities, as many HRDs and activists that had years of experience managing administrative and financial affairs of NGOs have been imprisoned since 2016, with many organisations thus having to re-build this internal expertise from scratch.[71]

A failure to accurately or properly keep books can be sanctioned by administrative fines against the executives, under both administrative and fiscal legislation. Executives may also be prosecuted on this basis under Article 32(d) of the Law on Associations, which foresees up to one year of imprisonment or a monetary fine. Association and foundation executives may also be prosecuted under Article 155 of the Criminal Code on grounds of misuse of trust, for failure to properly keep financial records.

In addition to recordkeeping obligations, associations and foundations are subject to several reporting obligations. Both must submit detailed, yearly declarations on their activities and finances, and notify the administration of any property acquired or representative offices set up. NGOs must also notify the administration of any foreign funding received from abroad before spending it, as well as any aid sent abroad. Associations must further notify the administration of the results of general assembly meetings, including the names of the

67 Third Sector Foundation of Turkey (TÜSEV), Dernekler için Yasal Mevuat Rehberi (March 2019). Available at: https://www.tusev.org.tr/usrfiles/images/DerneklerIcinYasalMevzuatRehberi_TUSEV.pdf; TÜSEV, Yeni Vakıflar için Yasal Mevzuat Rehberi (Haziran 2020). Available at: https://siviltoplum-kamu.org/tr/wp-content/uploads/2020/06/YeniVakifMevzuatRehberi.Final_.pdf.

68 Interview no. 9 with Gözde Engin from Rosa Women's Association (Rosa Kadın Derneği), online, February 17, 2022. Even though some digitalisation of the operations of NGOs is being introduced, the infrastructure is not yet set up, and there remain doubts on the part of NGOs that the digital infrastructure will be secure.

69 Interview no. 5 with NGO representative, online, February 10, 2022.

70 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.

71 Interview no. 13 with HRD, online, March 2, 2022.

association's executives, and any eventual changes among the executives. These declarations and notifications must be filed within specific deadlines, with any failure to accurately and timely submit them sanctioned by administrative fines. They can be made via online portals; however, the lack of accessible and detailed guidelines on using them, and sporadic changes to the portals, create additional burdens on NGOs attempting to comply with these requirements.

An additional reporting requirement was introduced in 2018 with an amendment in the Regulation on Associations that required associations to provide the personal information of each member via the online portal. Prior to this, associations would only provide statistics about their membership in the yearly declaration. This amendment, introduced without any prior civil society consultations, was criticised for violating the right to privacy and the right to freedom of association, and for its potential chilling effect.[72]

The regulation's provisions were cancelled by the Council of State in September 2021 on the basis that fundamental rights and freedoms can only be restricted by law.[73] However, this amendment had already been introduced to the Law on Associations via an omnibus law in March 2020.[74] While this legal basis will not apply retroactively, it does not change the fact that most associations already supplied all of their members' information under threat of administrative fines. Along with many other factors that restrict civic space, this notification requirement appears to have contributed to the decline in total association membership from 11.2 million in 2017 to 7.3 million in 2019.[75] This particularly impacted membership to LGBTI+ organisations, as people were worried that they would be "outed" to the state.[76]

Associations and foundations are also subject to broader administrative frameworks applicable to legal entities and/or employers, such as the Law on the Protection of Personal Data or the social security framework. Other bodies of laws may be applicable according to the NGOs' area of work, such as education-related legislation for organisations that hold events directed at children. These laws and regulations bring with them additional recordkeeping and reporting obligations, and administrative bodies often have broad authority to audit and sanction non-compliance.

These examples demonstrate that the legal, administrative, and financial framework in Turkey governing associations and foundations is not conducive to the defence of human rights. This scattered and complicated framework, encompassing several laws and regulations, undermines legal certainty and makes it incredibly burdensome for NGOs to fully comply with these obligations while continuing their daily work.[77] The Venice Commission states that "the cumulative effect of all legal rules on the freedom needs to be assessed, since the overlap of additional reporting obligations with other already existing reporting obligations (whether they are of a fiscal nature or otherwise) is likely to create an environment of excessive State monitoring over the activities of NGOs, which could hardly be conducive to the effective enjoyment of freedom of association."[78] Recordkeeping and reporting obligations contained under Turkish law are disproportionate and restrict the right to freedom of association.

72 See "The Amendments to Law on Association Regarding Notifications of Members to The Administration" in STGM, Outlook of Freedom of Association in Turkey (September 2020). Available at: https://www.stgm.org.tr/sites/default/files/migrationfiles/stgmduyuruen-files/017962/000008416-outlook-of-freedom-of-association-in-turkey.pdf; supra, note 43, para. 167.

73 STGM, Cancellation Decision of the Council of State for Notification of Association Member and Employee Information (September 27, 2021). Available at: https://www.stgm.org.tr/en/blog/cancellation-decision-council-state-notification-association-member-and-employee-information.

74 Article 23 of the Law No. 7226, dated March 25, 2020.

75 Expert Council on NGO Law, Opinion on the Compatibility of Amendments to the Turkish Law on Associations with European Standards (April 2020), para. 42. Available at: https://rm.coe.int/expert-council-conf-exp-2020-2-opinion-amendments-to-turkish-law-on-as/16809e4387.

76 Interview no. 13 with HRD, online, March 2, 2022.

77 See also supra, note 6, para. 131.

78 See supra, note 51, para. 111.

Box #2 – Discrimination in aid collection and "public benefit" status

Turkish law differentiates between donation and aid, requiring everyone – including NGOs – to seek prior permission for the latter. However, the distinction between the two concepts is vague, and the applicable rules are unforeseeable. Public fundraising activities such as campaigns or events, which are common methods used by NGOs for financial sustainability everywhere, are considered as aid collection by authorities in Turkey and are thus subject to prior authorisation.

The Law on Aid Collection states that associations may collect aid "to realise their purposes, provide assistance to persons in need and realise or support one or more of public services in conformity with public benefit." (Article 3) The local administration – governor or district governor – authorised to grant permits shall review the application based on "the significance of the work, the capacity of those who will collect aid, the conformity of the service to be rendered with the purpose and public benefit, whether the aid collection can succeed, and other relevant issues as needed." (Article 9) These unclear criteria and broad authority lead to arbitrary decisions. While there are no statistics available for the number of aid collection applications or permits granted, rights-based NGOs are known to be denied permits (e.g. on the basis that the proposed aid collection is not for public benefit),[79] and may even refrain from applying given the cumbersome and lengthy application procedure that will likely result in a rejection. Violating the Law on Aid Collection can be sanctioned with exorbitant administrative fines, which were increased with the Law No. 7262, examined below.

Article 27 of the Law on Associations includes a special public benefit status, to be granted by the President (Council of Ministers, prior to the 2017 referendum), to those organisations whose purpose and activities are qualitatively and quantitatively beneficial to the public. Donations by persons or legal entities to associations with public benefit status can be deducted from the person/legal entity's taxes within certain limits, which brings an incentive for donors while increasing public support.[80] Furthermore, the President may specify that some associations with public benefit status may collect aid without prior authorisation. Of the 121,981 active associations[81] in Turkey, 362 – fewer than 0.3% – have public benefit status.[82] A total of 11 associations – 0.009% of all associations – may collect aid without prior permission.[83] These include institutions set up as associations or foundations but that are under the state's authority, such as the Turkish Red Crescent Society.

This restriction over the right to seek resources is disproportionate and unjustified. It also leads to discrimination between NGOs due to the administration's discretionary and arbitrary interpretation of the concept of public benefit, introducing exemptions and even incentives for a tiny fraction of associations and foundations, while depriving the rest of these rare favourable provisions.

79 TÜSEV, Türkiye'de Yardım Toplama Mevzuatına Dair Değerlendirme: Sorunlar ve Engeller (March 2020). Available at: https://www.tusev.org.tr/usrfiles/images/YardimToplamaBilgiNotu_Ulusal.pdf.

80 The same applies for foundations for tax-exempt status. See TÜSEV, Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations (July 2018). Available at: https://tusev.org.tr/usrfiles/images/VergiRaporuENG_27.09.18.pdf.

81 As of May 17, 2022. Directorate General of Civil Society Relations of the MoI, https://www.siviltoplum.gov.tr/dernek-sayilari.

82 As of May 17, 2022. Directorate General of Civil Society Relations of the MoI, https://www.siviltoplum.gov.tr/kamu-yararina-calisan-dernekler.

83 See Directorate General of Civil Society Relations of the MoI, https://www.siviltoplum.gov.tr/izin-al-madan-yardim-toplama-hakkina-sahip-kuruluslar.

c. "The Sword of Damocles"[84]: Administrative Audits, Ensuing Sanctions, and Their Impact After the Adoption of Law No. 7262

i Background

"Civil society has become criminalised after the state of emergency. Associating [civil society] with terror and the emergency decrees created serious fear. That they can shut down the association with the Law [No. 7262] increased that fear. Now we are concerned that [political prosecutions against executives] will harm the association. Even if I don't feel that concern, the person [facing terrorism charges] will be concerned that they will harm the association and they will have to leave their role within the association or associations will have to analyse this risk while determining their executive bodies."[85]

Administrative audits were not very high on NGOs' agendas prior to the coup attempt of 2016, even though NGOs, professional associations, and companies that supported the Gezi Park protests faced a wave of tax audits and fines in 2013.[86] At the time, the Law on Associations indicated that associations could be audited by the governor or the Minister of Interior Affairs as they saw fit, although audits were not particularly common. NGOs became alarmed that they could be targeted via administrative measures, following the closure of associations by decrees under the state of emergency and increasing pressure against civil society. Respondents highlighted that almost no NGOs were fully compliant with administrative and financial rules at that time, given the complicated framework explained above, and a lack of resources and expertise.[87]

As reports of audits increased,[88] many NGOs sought experts in financial and administrative matters to put their documents and books in order. This was also partly necessary due to an overwhelming reliance on grants, which require NGOs' full compliance with the relevant legal obligations, and imposes additional recordkeeping and reporting requirements. An HRD stated that they had to become specialists in the financial and administrative affairs of NGOs because "this had to become a specialty over the past five years… to be able to manage these grants and become less susceptible to the pressure [against civil society]."[89]

The risk of administrative harassment against associations through audits and sanctions increased following the adoption of Law No. 7262 on December 27, 2020 in the Grand National

84 Interview no. 12 with İHD, online, February 25, 2022; Interview no. 1 with NGO representative, online, February 3, 2022.

85 Interview no. 13 with HRD, online, March 2, 2022.

86 Amnesty International, Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey (2013). Available at: https://www.amnesty.org/en/wp-content/uploads/2021/06/eur440222013en.pdf; Bianet, Human Rights Foundation Fined After Aiding Gezi Protestors (March 18, 2015). Available at: https://m.bianet.org/bianet/diger/163126-human-rights-foundation-fined-after-aiding-gezi-protestors; T24, Koç Grubu'nun ardından TMMOB'a da vergi incelemesi (August 22, 2013). Available at: https://t24.com.tr/haber/koc-grubunun-ardindan-tmmoba-da-vergi-incelemesi,237621.

87 Interview no. 13 with HRD, online, March 2, 2022; Interview no. 1 with NGO representative, online, February 3, 2022.

88 Minister Soylu stated on March 31, 2022 that the MoI increased audits following the coup attempt, and 3,682 associations were audited in 2017, 5,582 associations in 2018, 14,639 associations in 2019, and 10,511 associations in 2020 (a decrease due to the pandemic). See MoI, Bakanımız Sn. Süleyman Soylu'nun Başkanlığında STK Temsilcilerinin Katılımıyla, Sivil Toplum İstişare Kurulu Toplantısı Gerçekleştirildi (March 31, 2022). Available at: https://www.icisleri.gov.tr/bakanimiz-sn-suleyman-soylunun-baskanliginda-stk-temsilcilerinin-katilimiyla-sivil-toplum-istisare-kurulu-toplantisi-gerceklestirildi. See, for examples of audits prior to the Law No. 7262, "Harassment of Associations Through Administrative Measures," in supra, note 7. Migration Monitoring Association (Göç İzleme Derneği) and its executives face judicial harassment due to their work on forced migration, which was initiated following an administrative audit. Keep the Volume Up, Migration Monitoring Association. Available at: https://www.sessizkalma.org/en/defender/migration-monitoring-association/. Many LGBTI+ rights organisations also faced repetitive audits. Interview no. 13 with HRD, online, March 2, 2022.

89 Interview no. 13 with HRD, online, March 2, 2022.

Assembly of Turkey, and its entry into force on December 31, 2020 following publication in the Official Gazette. Rushed to a vote by AKP MPs without consulting civil society or opposition MPs,[90] the law was enacted despite objections from 694 NGOs working in various fields that it would violate the Constitution and the freedom of association.[91] Purportedly aimed at complying with the anti-money laundering and terrorist financing watchdog Financial Action Task Force's ("FATF") report on Turkey and its recommendations, and with UN Security Council resolutions concerning combatting the financing of the proliferation of weapons of mass destruction, Law No. 7262 introduced several amendments to the Law on Associations and the Law on Aid Collection that carried great risk of further restricting civil society's work.[92] An MP from the Republican People's Party (*Cumhuriyet Halk Partisi - CHP*), the main opposition party, stated that they objected to the law because "[a]mong the tens of FATF recommendations, only a couple were included. No provisions were included that would affect the political power in terms of accountability, combatting corruption, or transparency of bureaucrats. This is why we criticised it… Secondly, and more importantly, … it concerned the MoI antidemocratically seizing NGOs and appointing trustees… The gist of it is, under the title of preventing the proliferation of mass weapons of destruction, this law gave the MoI all kinds of authority to put NGOs and institutions with connections abroad under immense pressure and to make them non-functional when they see a need for it."[93] CHP filed a case for the annulment of several provisions of Law No. 7262 before the Constitutional Court; the case and CHP's request for the stay of their enforcement, as an interim measure, are still pending.[94]

In their letter dated February 11, 2021, UN Special Rapporteurs voiced concern that "the FATF's assessment is being misinterpreted and used as a basis to broadly restrict civil society and to punish the work of HRDs under the banner of countering terrorism finance."[95] The Venice Commission adopted an opinion on July 6, 2021 stating that provisions of Law No. 7262 "lead to far reaching consequences for basic human rights, in particular the right to freedom of association and expression and the right to a fair trial."[96]

90 Interview no. 14 with Utku Çakırözer, Eskişehir MP, online, March 9, 2022.

91 See https://siviltoplumsusturulamaz.org/.

92 See "Box #1 – The Recent Legislative Amendments Threatening Independent Civil Society" in supra, note 7; Human Rights Joint Platform (*İnsan Hakları Ortak Platformu* - IHOP) et al., Bill for the Prevention of Financing of the Proliferation of Weapons of Mass Destruction – Assessment (December 22, 2020). Available at: https://ihop.org.tr/kitle-imha-silahlarinin-yayilmasinin-finansmanininonlenmesine-iliskin-kanun-teklifine-dair-degerlendirme; The Observatory, Turkey: New law seriously threatens freedom of association and must be repealed! (January 15, 2021). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-new-law-seriously-threatens-freedom-of-associationand-must-be; TÜSEV, An Analysis of the Application of Financial Action Task Force Recommendations and its Implication on Civil Society in Turkey (February 2021). Available at: https://www.tusev.org.tr/usrfiles/images/MaliEylemGorevGucuSivilToplumEN_26022021.pdf; Amnesty International, Turkey: Weaponizing Counterterrorism, Turkey Exploits Terrorism Financing Assessment to Target Civil Society (June 2021). Available at: https://www.amnesty.org/en/documents/eur44/4269/2021/en/.

93 Interview no. 14 with Utku Çakırözer, Eskişehir MP, online, March 9, 2022.

94 As of May 2022.

95 The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders, OL TUR 3/2021 (February 11, 2021). Available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26004.

96 Venice Commission, Turkey: Opinion on the Compatibility with International Human Rights Standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, CDL-AD(2021)-023cor (July 6, 2021). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)023cor-e.

Box #3 – Law No. 7262's problematic provisions[97]			
Article/Law	*Previous provision*	*Law No. 7262 amendment*	*Comment*
Article 3 & 32 Law on Associations	No restrictions over joining associations' executive boards based on conviction of a particular offence.	Persons convicted of terrorism financing, drug manufacturing and trafficking, or money laundering charges cannot serve on the governing bodies of associations (i.e. the board of directors and board of auditors), and if these persons are convicted while serving on the governing bodies, their mandates shall end. If the association does not end these persons' official duties within seven days following a written warning, both these persons and the executives of the association shall be subject to an administrative fine (2,228 TRY, approx. 140 EUR, in 2022). Failure to comply with the second written warning by the administration within 30 days shall lead to a case for the dissolution of the association.	This amendment is worrisome considering the widespread abuse of terrorism-related legislation and the judiciary's lack of independence.
Article 30/A Law on Associations	N/A	If a staff member or a member of the association's governing bodies is prosecuted[98] for the above-mentioned charges, the Minister of Interior Affairs may suspend these persons or the bodies they serve in as a temporary measure. The Minister may further suspend the association's activities, and in this case, apply to the court to rule on the suspension. The Minister can also request the association's dissolution by the court. The governor shall ask the court to appoint trustees to the association whose executives or governing bodies are suspended by the Minister.	This far-reaching provision is disproportionate and infringes the right to freedom of association. Criteria for suspension of activities and dissolution of the association are not set out clearly, and pave the way for arbitrary application by the administration and the courts.
Article 19 & 32 Law on Associations	Audits shall be made as needed by the Minister of Interior or local administrative authority (governor/district governor). Failure to cooperate with the auditors shall be punished by up to three months of imprisonment and a judicial fine.	Audits shall be made every year and within three years at the latest, based on risk assessments. The audits can be made by public officers. Failure to cooperate with the auditors shall be punished by imprisonment from three months to one year, or by a judicial fine. The Ministry or the governor can also request that relevant ministries or government bodies audit the association or any other institution that partners with the audited association.	No criteria are identified in the law on what the risk assessment entails, or on what expertise the auditing public officers should have, paving the way for arbitrary implementation and cumbersome audits by unqualified public officers.

97 This box includes problematic provisions relevant to the scope of this Report. For a comprehensive overview of the amendments, see TÜSEV, supra, note 92; Venice Commission, supra, note 96.

98 The initial draft of the law had granted the Minister this authority if a staff member or a member of the association's governing bodies was investigated for these crimes. The only amendment to the draft, after wide objections from civil society, was to amend this condition to prosecution. Gazete Duvar, Dernek ve vakıflara kayyım yasasında 'kovuşturma' ayarı (December 26, 2020). Available at: https://www.gazeteduvar.com.tr/dernek-ve-vakiflara-kayyim-yasasinda-kovusturma-ayari-haber-1508363.

Article 21 & 32 Law on Associations	Aid received from abroad shall be reported to the administration before spending. Non-compliance with the requirement to priorly report foreign aid received shall be punished with up to three months of imprisonment or a judicial fine.[99]	In addition to funding received from abroad, any aid sent abroad shall be priorly reported to the administration. Failure to timely and accurately report foreign aid sent or received shall be subject to a newly introduced administrative fine (ranging from 7,429 to 148,607 TRY, approx. 475 to 9,500 EUR, in 2022).	This range of fines grants wide discretionary power to the administration and is unforeseeable and disproportionate. Considering the backdrop against which this amendment was made, this provision contributes to the stigmatisation of associations that receive foreign funding, and intensifies the chilling effect on the right to seek funds.
Article 6 & 29 Law on Aid Collection	Aid collection shall be conditioned on the prior possession of a permit. Unauthorised aid collection shall be subject to an administrative fine of 700 TRY (to be revalued every year; 2,226 TRY, approx. 140 EUR, in 2020[100]).	Online aid collection shall fall under the remit of the Law on Aid Collection and be conditioned on the prior possession of a permit. The MoI shall request that the service provider remove the unauthorised aid collection content and may also request the criminal peace judgeship to block access to the content. Unauthorised aid collection shall be subject to an administrative fine of 5,000 to 100,000 TRY (to be revalued every year; 7,429 to 148,607 TRY, approx. 475 to 9,500 EUR, in 2022). The fine's lower and upper limits are doubled if the aid was collected online.	This blanket ban is unduly intrusive and violates the right to seek funding. The wide range of possible fines is legally uncertain and unpredictable, and the amount is disproportionate.

99 No examples were found where this sanction was implemented. However, given the duration of the imprisonment, it is possible that this provision was applied against an association executive, but that the sentence was later suspended. It is not possible to conduct an exhaustive scan of precedent since not all degree courts' decisions are published.

100 Directorate General of Civil Society Relations of the MoI, List on Administrative Fines and Monetary Limits, https://www.sivil-toplum.gov.tr/kurumlar/siviltoplum.gov.tr/Mevzuat/Genelgeler-Ekler/idari_para_cezalari_202023_sayili_genelgeEk.pdf.

The Regulation on Amending the Regulation on Associations was published in the Official Gazette on October 21, 2021, pointing to the MoI's preparations to implement amendments introduced with Law No. 7262. The amendments provide that the Directorate General of Civil Society Relations of the MoI shall regulate the criteria for the risk-based approach (to be revised annually), and associations shall be categorised into low, medium, and high-level risk groups, with the latter two subject to regular audits. What criteria will be used for this categorisation remains unclear. İHD filed a case for the annulment of these provisions before the Council of State in December 2021, on the basis that this amendment constitutes an unlawful restriction of the right to freedom of association, as it violates the principle of legality, lacks a legitimate aim due to its securitisation of all associations, and is unjustified and disproportionate. The case, including İHD's request for the stay of the provisions' execution, is pending.[101]

On the same day as the Regulation's publication, FATF announced that it added Turkey to its list of countries subject to increased monitoring (the so-called grey list), with the FATF President Marcus Pleyer stating that "Turkey needs to implement a true risk-based approach to [non-profit organisations] and ensure authorities don't disrupt or discourage legitimate activity."[102] Minister Soylu, criticising FATF's decision as "political," claimed that the reason for this decision was because they "prevented LGBT from destroying the family structure," and refused to release Kavala and HDP Co-Chair Selahattin Demirtaş.[103]

ii NGOs' Experiences Following Law No. 7262

A wave of audits started shortly after Law No. 7262's adoption. These include audits against NGOs that received funding from the Chrest Foundation (see §IV.A.a above). Even though statistics on audits are not published, Minister Soylu recently stated during a public speech that 17,787 associations were audited in 2021 and 5,214 in 2022 (by March 31), with 25,000 audits envisioned by the end of the year.[104]

Of the five associations and three foundations interviewed for this research, three associations and two foundations had been audited by at least one administrative body since the enactment of Law No. 7262.[105] Importantly, none of the audited organisations were told that the audit was conducted within the scope of the newly introduced provisions, and most were not given any reason for why they were audited. Auditors were public officers from the MoI, from provincial directorates for civil society relations, the Directorate General of Foundations and the Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu - MASAK*). The duration of the audits ranged from a few days to weeks and even months, covering a term from one year up to ten years, and involved multiple on-site visits and information and document requests concerning books, financial documents, bank records, foreign funding, and activities. These demands severely restricted the daily operation of NGOs, as auditors were present at the association offices for prolonged periods of time, and "just having the auditor there creates a certain pressure."[106] It was also difficult to gather information dating back several years. Three NGOs faced administrative fines afterwards. One of them was imposed an administrative fine due to a trivial digit error in the foreign aid notification, which they characterised as

101 As of May 11, 2022.

102 Outcomes FATF Plenary, 19-21 October 2021 (October 21, 2021). Available at: https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-october-2021.html; Bianet, Finance watchdog FATF 'grey lists' Turkey, Turkey denounces the decision (October 22, 2021). Available at: https://m.bianet.org/english/economy/252185-finance-watchdog-fatf-grey-lists-turkey-turkey-denounces-the-decision.

103 Duvar English, Interior Minister Soylu boasts about Turkey's crackdown on LGBT people, "being Muslim state" (October 22, 2021). Available at: https://www.duvarenglish.com/interior-minister-soylu-boasts-about-turkeys-crackdown-on-lgbt-being-muslim-state-news-59302.

104 MoI, supra, note 88.

105 One organisation, an LGBTI+ rights association, had been audited by multiple administrative bodies shortly before the passage of the Law. One organisation, a successor of an association shut down by decree in 2016, had only recently registered. One organisation had not been audited for over a decade.

106 Interview no. 12 with İHD, online, February 25, 2022.

disproportionate; their objection to the fine is pending before the criminal peace judgeship. Two NGOs were provided with audit reports that included recommendations to improve the NGO's governance, and one of them stated that they found this report useful.

Around mid-March 2022, after interviews for this study were completed, provincial directorates for civil society relations in a number of cities sent letters to several associations, referencing documents from MASAK dated January 17, 2022, and from the Directorate General of Civil Society Relations of the MoI dated March 17, 2022 (neither of these documents were accessible). The letters mention associations' obligations under the "Action Plan to be Implemented in the FATF Evaluation Process" (which has not been provided to associations) and asks the board of directors to inform the provincial directorate of measures taken in line with the guide published by the Ministry of Interior titled "Best Practices in Preventing the Use of Associations in Terrorism Financing."[107] Not every association received this request, and letters by some provincial directorates indicated that this request was made only to "associations in the high and mid-level risk group."

MoI representatives had indicated to the Venice Commission before the adoption of the regulation that they already use this categorisation, whose criteria are available only to the authorities.[108] While this may seem to be MoI's attempt to implement FATF's recommendation to apply a risk-based approach to preventing terrorism financing,[109] in this case risk groups are assigned to associations prior to the audits that would allow an inspection of the association's finances, which in turn would determine how vulnerable it is to terrorism financing. The Venice Commission states that "[t]his seems to confirm that the risk-assessment is a pretext for increased government control of the NGOs and that the main priority is not to detect the irregularities amounting to crime."[110] Not only do these far-reaching provisions fail to serve a legitimate purpose, but also the criteria used are determined entirely by the administration without any basis in the law, and the designating factors are unknown to civil society. The MoI thus expects associations to take measures to decrease their risk level without informing them of why they were placed in that category. For instance, FATF indicates that NGOs engaged in service activities are at higher risk, while those engaged in "expressive activities" (e.g. advocacy groups and think tanks) are not, and that the risks facing service-providing NGOs differ according to additional factors such as "proximity to an active terrorist threat."[111] Notably, many associations that received letters that mention their designation as mid or high-level risk groups are engaged in expressive activities only, such as monitoring, reporting, and advocacy.

iii Law No. 7262's Chilling Effect

"If they attempt to implement these amendments there will be no NGOs left in Turkey. ... This is the Sword of Damocles. They can shut down, suspend the activities of, or appoint a trustee to any association they want."[112]

Participants emphasized that they see Law No. 7262 and the ensuing wave of administrative audits and sanctions as a means to control and punish civil society.[113] Rules and procedures

107 Directorate General of Civil Society Relations of the MoI, Best Practices in Preventing the Use of Associations in Terrorism Financing (April 2021). Available at: https://www.siviltoplum.gov.tr/rehberler.

108 Supra, note 96, para. 60.

109 FATF, Turkey: 1st Enhanced Follow-up Report & Technical Compliance Re-Rating (November 2021). Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Turkey-2021.pdf.

110 Supra, note 96, para. 57.

111 FATF, Best Practices on Combating the Abuse of Non-Profit Organisations (2015). Available at: https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html.

112 Interview no. 12 with İHD, online, February 25, 2022.

113 In the same direction, see Amnesty International, Turkey: Terrorism Financing Law Has Immediate 'Chilling Effect' on Civil Society: Impact of Law No. 7262 on Non-Profit Organizations (October 2021). Available at: https://www.amnesty.org/en/documents/eur44/4864/2021/en/.

on audits, including on the limits of each administrative body's authority, are uncertain and unforeseeable. This can lead to overlapping audits by multiple administrative bodies, as well as to dissolution cases and criminal investigations against executives, under both NGO legislation and the Criminal Code. They allow great discretionary power to both the auditing administrative body and the individual public officers present at the audit, which presents a risk of abuse of authority. The process is lengthy and cumbersome even though these audits can be conducted in a much less intrusive manner, as NGOs already submit detailed information under the various reporting obligations explained in the previous sub-chapter. Most NGOs are not provided with feedback to improve their functioning, nor do they have access to the concluding audit report.[114] This leaves them in a state of uncertainty, as they do not know whether the audit will trigger audits and/or sanctions by other administrative bodies. NGOs are often automatically sanctioned with administrative fines without being provided the opportunity to rectify mistakes. Any resulting administrative sanctions are thus unforeseeable, and on this basis alone are unjustified and disproportionate. These sanctions infringe on associations' freedom to determine their activities and to seek, receive, and use resources.[115]

Law No. 7262 has had a demonstrable chilling effect on the right to freedom of association.[116] Since the majority of sanctions are imposed directly on the board of directors, and especially its chair, NGOs stated that people are more reluctant to serve on executive boards.[117] NGOs must also consider whether executives are being prosecuted or at risk of prosecution.[118] People are also more reluctant to become members of associations that appear to have high-risk status, such as those targeted with smear campaigns and frequent audits: "We can say that these audits, even if no serious fine is imposed as a result, create a major barrier in people's participation in the association's activities."[119]

Another NGO representative indicated that the blurred legal distinction between donations and aid is their "never ending concern," and is even higher on their agenda since the enactment of Law No. 7262, and that they even ask organisers of independent fundraising campaigns for the NGO's benefit to shut them down for fear of exposing themselves to the risk of sanctions.[120] Another respondent stated that Law No. 7262 deepened the reluctance of individuals to donate, especially since this law followed state of emergency practices such as donations to a charity organisation with public benefit status later appearing in investigation files.[121] According to one respondent, this chilling effect contributed to decisions by executives to dissolve associations that have become relatively passive over the years, or that already faced difficulties in staying afloat.[122]

114 Many NGOs are able to access audit reports for the first time in court documents pertaining to cases filed pursuant to the audit report.

115 Kazdağı Association for the Preservation of Natural and Cultural Resources, an environmental NGO, announced on February 1, 2022 that following an administrative audit, the chair of their executive board, Süheyla Doğan, was fined 51,730 TRY, approx. 3,300 EUR, for minor irregularities in bookkeeping and reporting obligations. The chair was also called in for questioning following a criminal complaint by the Edremit District Governor's Office on grounds that the association's one-time provision of winter boots to 100 children in need "was an activity violating the charter of the association." See Kazdağı Association for the Preservation of Natural and Cultural Resources (February 1, 2022). Available at: https://twitter.com/kazdagikoruma/status/1488524566527938567.

116 In the same direction, see supra, note 113.

117 Interview no. 8 with Association of Lawyers for Freedom Van Branch (*Özgürlük için Hukukçular Derneği – ÖHD Van Şubesi*), online, February 17, 2022; Interview no. 13 with HRD, online, March 2, 2022; Interview no. 12 with İHD, online, February 25, 2022.

118 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.

119 Interview no. 12 with İHD, online, February 25, 2022.

120 Interview no. 5 with NGO representative, online, February 10, 2022. This fear is not unfounded: bank accounts of the Nesin Foundation, a well-known education organisation, were frozen in May 2022 due to an "unauthorised aid collection activity." Nazlan Ertan, Turkish educational foundation says accounts frozen on bogus charges, Al-Monitor (May 12, 2022). Available at: https://www.al-monitor.com/originals/2022/05/turkish-educational-foundation-says-accounts-frozen-bogus-charges.

121 Interview no. 1 with NGO representative, online, February 3, 2022.

122 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.

Administrative audits and sanctions exert pressure on NGOs, even if the level of threat they perceive may differ based on factors such as their area of work, level of government criticism, capacity (including number of administrative employees), financial volume, and public recognition and support. One respondent highlighted that this climate has caused them to view any interaction with the administration with suspicion: "It is likely to perceive something routine as harassment in this environment… The lack of standards [in administrative audits] is emotional violence [against NGO employees]."[123] A representative of an audited NGO stated, "This threat is not over because the audit is over. We can talk of a more long-term, deep-seated impact."[124] A representative of an NGO with a history of overlapping audits mentioned that they continue their work "as if they can be audited any moment."[125] Conversely, representatives of one NGO that – to their surprise – has not been audited for over a decade mentioned that they feel pressure from the mere potential of an audit that would cover such a long period. Another respondent pointed out that "[t]his law hasn't concretely impacted our daily practices today but it may tomorrow. It has paved the way for all kinds of arbitrariness."[126]

NGOs are concerned about trustees being appointed to their organisations, or of closure cases.[127] This concern is deepened by the still-fresh memory of the mass closures of associations following the coup attempt:[128] "Turkey experienced the state of emergency and some practices became permanent. The state learned many things then, how to shut down a university, how to seize a foundation. There is a practice of this now. With [Law No. 7262], these practices will be implemented quicker and more seriously. It is a sword hanging over civil society."[129] A representative of a women's rights organisation stated, "Associations were shut down before. There is the [organisation], and there is the [women's] movement, and these are not too independent of each other. The safety and welfare of [the women's movement] is crucial for us too, this is what we are worried about."[130]

NGOs based in Kurdish cities are at further risk given that the terrorism framework is systematically abused to suppress Kurdish HRDs, a phenomenon which intensified following the collapse of the peace process in 2015.[131] A representative of a lawyers' association, whose many executives and members are judicially harassed, stated, "[The state] sees us as leaders of [armed] organisations. It doesn't matter what we defend, it doesn't see us as HRDs."[132] A representative of a women's rights organisation indicated that they fear their organisation will be shut down: "Of course we are intimidated by monetary fines, but there is no one in the executive board that isn't facing a criminal case. … They can use this law to fully stop the association's activities, it is not just against the executive. They can appoint a trustee. This is the main issue for us, because almost everyone is being prosecuted."[133] They added that they think their NGO will be the among the first ones to be impacted by Law No. 7262: "We are in a state of waiting as long as this law remains and is left to the conscience of its enforcers. … It is an anxious existence."[134] These concerns are justified considering that several organisations in the region, including many women's rights organisations, were previously shut down under emergency decrees.[135]

123 Interview no. 7 with media representative, online, February 17, 2022.
124 Interview no. 5 with NGO representative, online, February 10, 2022.
125 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.
126 Interview no. 2 with Metin Bakkalcı, Chair of TİHV, online, February 3, 2022.
127 Interview no. 12 with İHD, online, February 25, 2022.
128 See "Closure of Associations" in supra, note 7.
129 Interview no. 1 with NGO representative, online, February 3, 2022.
130 Interview no. 5 with NGO representative, online, February 10, 2022.
131 Öztürk Türkdoğan, Human Rights Defenders in An Iron Cage: The Anti-Terrorism Law in Turkey, İHD (January 2022). Available at: https://ihd.org.tr/en/wp-content/uploads/2022/05/OzturkTurkdogan_ATL-Report_OMCT_EN.pdf.
132 Interview no. 8 with Association of Lawyers for Freedom Van Branch, online, February 17, 2022.
133 Interview no. 9 with Gözde Engin from Rosa Women's Association, online, February 17, 2022.
134 Ibid.
135 See "Box #5 – Challenges Faced by the Women's Rights Organisations Shut Down by Emergency Decrees" in supra, note 7.

Importantly, given the track record of the Turkish judiciary, especially in terrorism-related cases, and the erosion of the rule of law, NGOs are legitimately concerned that they lack any effective remedy against state abuse and against violations of their rights. The cases examining TİHV's objections to multiple administrative fines, imposed in 2013 by the Social Security Institution after TİHV's treatment of torture survivors during the Gezi Park protests, are still pending: "Even though we are prevailing [in court], it has been close to eight years. This is the biggest challenge. Something so clear is ongoing for so long."[136] Considering the duration of proceedings, the resources required to object to administrative sanctions, and the risk of drawing further attention, NGOs are also deterred from exercising their right to remedy for smaller fines, even if they are unlawfully imposed. One HRD, who advises NGOs on legal matters, stated that they make use of the admissibility criteria of the Constitutional Court while evaluating whether to object to administrative fines:[137] "If the fine is an amount that would not put them in a challenging spot financially, and it is not significant [in terms of the implementation and interpretation of the Constitution], I advise them to pay. [The fine is imposed] so that [a public officer] will appear [to their seniors] to be doing their job [i.e. auditors are expected to issue fines]; so be it [if the fine is insignificant]."[138]

Box #4 – Closure cases against Tarlabaşı Community Center and the We Will Stop Femicides Platform after Law No. 7262's enactment

Two associations, Tarlabaşı Community Center (*Tarlabaşı Toplum Merkezi - TTM*) and the We Will Stop Femicides Platform (*Kadın Cinayetlerini Durduracağız Platformu - KCDP*), face baseless closure cases filed in 2021 and 2022, following administrative audits that demonstrate how the legal framework is easily abused by the administration and the judiciary. While the indictments prepared by the prosecutors do not include any explicit reference to the provisions amended by Law No. 7262, their timing is noteworthy and signals that the administration intends to intensify its pressure against civil society through closure cases, which had been uncommon since the wave of dissolution cases against LGBTI+ organisations in the 2000s.[139]

TTM, a community centre based in the marginalised Tarlabaşı neighbourhood in Istanbul working to address poverty, discrimination, and gender inequality, was subject to an intense smear campaign by a pro-government journalist due to an event TTM organised for its volunteers that focused on the protection of LGBTI+ children. The smear campaign started in June 2021 and continues to this day, via social media and newspaper reports, and abetted by AKP and MHP politicians and influential pro-government mouthpieces, accusing TTM of "making LGBTI perversion and PKK propaganda to children" and advocating for the closure of TTM. After the smear campaign started, the association chair was questioned on charges of obscenity but was not prosecuted. TTM was subjected to administrative audits by four different administrative bodies in 2021, including one accompanied by a police officer who forced their way into the association building in violation of procedural guarantees. As a result of the MoI audit, TTM initially faced administrative fines for irregularities in bookkeeping, and for failure to timely report foreign funding.

136 As of May 2022; Interview no. 2 with Metin Bakkalcı, Chair of TİHV, online, February 3, 2022.

137 Article 48(2) of the Law on the Establishment and Rules of Procedures of the Constitutional Court No. 6216 states, "The Court can decide that applications which bear no importance as to the application and interpretation of the Constitution or regarding the definition of the borders of basic rights and freedoms and whereby the applicant has incurred no significant damages and the applications that are expressly bereft of any grounds are inadmissible." See https://www.anayasa.gov.tr/en/legislation/law-on-constitutional-court/.

138 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022.

139 Hürriyet Daily News, LGBT organization faces closure in Turkey (February 11, 2010). Available at: https://kaosgl.org/en/single-news/lgbt-organization-faces-closure-in-turkey.

In 2022, TTM faced two cases that in effect demand the closure of the association; both were filed pursuant to handover reports prepared by the MoI auditors, which TTM was able to access only after the closure cases were filed. The first case concerns "the determination of the association's non-existence," alleging that TTM's purpose has become impossible to fulfil because its charter references the predecessor of TTM, a project under Bilgi University, that ended in 2007. This case is clearly baseless considering that TTM's charter includes several other purposes, such as eradicating poverty and discrimination in Tarlabaşı, which TTM has been working on since its establishment in 2006. The case is pending. The second case requests the dissolution of the association on the grounds that "the purpose of the association became actively against morality and law, turning it into a centre where many crimes are committed." The alleged examples of these "crimes" are irregularities in bookkeeping and reporting obligations, workshops for children that were categorised as unauthorised educational activities,[140] and "seeking to influence the sexual identities of children… thereby normalising the sexual inclinations known briefly as LGBTI." TTM's activities were suspended as an interim measure by the court hearing the dissolution case, though this suspension was later lifted following TTM's objection. This case too is pending. TTM's executives are also being investigated for violating the Law on Associations. 99 NGOs and over 1,500 people have signed petitions objecting to the closure case against TTM.[141]

KCDP, one of the most influential women's rights organisations working to end femicides in Turkey, has been subject to several administrative audits since the coup attempt, following smear campaigns by anti-women's rights groups and complaints made to the Presidency's (formerly, the Prime Minister's) hotline, for "destroying the family structure" and "terror propaganda." The association faced administrative fines due to non-compliance with bookkeeping and reporting obligations. Before the enactment of Law No. 7262, in 2018, the governor requested that the prosecutor's office file a dissolution case against KCDP alleging that the association's purpose contravenes law and morality, on the basis of complaints made to the hotline; of records pertaining to the detention and trial of ten executives of the association; and that a member of KCDP was an executive of another association that had been shut down by decree under the state of emergency. The last allegation confirms concerns that membership notifications will be used to profile civil society actors.[142] In 2020, the prosecutor declined the request to file a case. A second request by the governor was sent in 2021, demanding that a dissolution case be filed on the same grounds, was accepted by the prosecutor, who filed a case in December 2021 alleging that the association's activities exceed the purpose stated in its charter, by "acting in violation of the law and morality." The case is pending, and was protested in several cities.[143]

It is well established under international human rights law that dissolution of an association must be a last resort, sought only in the most extreme cases.[144] The dissolution case against TTM is undoubtedly disproportionate to the few detected administrative or financial irregularities, many of which can be easily rectified, while other alleged grounds for TTM's and KCDP's dissolution lack any legal basis whatsoever. These examples suggest that the closure cases are politically motivated, and that the administration is abusing its authority to harass associations. It is noteworthy that in both cases, smear campaigns and hotline reports are run by anti-gender groups, and the indictments reference family

140 In November 2019, Antakya Purple Solidarity Women's Association was subjected to an exorbitant administrative fine, and their offices were sealed, based on a similar allegation. See Joint Statement, Turkey: Women's Rights Defenders in the Crosshairs (December 20, 2019). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-women-s-rights-defenders-in-the-crosshairs.

141 See iyikivarsinttm.org; https://www.change.org/p/iyi-ki-vars%C4%B1n-ttm-tarlaba%C5%9F%C4%B1-toplumunu-destekleme-derne%C4%9Fi-kapat%C4%B1lamaz-iyikivars%C4%B1nttm-ttmkapat%C4%B1lamaz.

142 See "Dismissals in the Public Sector and the Profiling of Civil Society Actors" in supra, note 7.

143 Ekmek ve Gül, KCDP'ye açılan davaya karşı kadınlar sokakta (April 16, 2022). Available at: https://ekmekvegul.net/gundem/kcdpye-acilan-davaya-karsi-kadinlar-sokakta.

144 ECtHR, Case of Adana TAYAD v. Turkey, Application No. 59835/10 (July 21, 2020). Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-204123%22]}; supra, note 11, para. 166; supra, note 43, Principle 10.

structure and "morality," another vague concept under Turkish law known to be abused to restrict the human rights of LGBTI+ people.[145] Taken together with Turkey's withdrawal from the Istanbul Convention, and increasing hate speech against LGBTI+ people and organisations,[146] the administrative and judicial harassment of TTM and KCDP also have a wider impact through their intensified chilling effect. This is worsened by pro-government media targeting other rights-based NGOs and demanding their closure, in addition to that of TTM and KCDP.[147]

HRDs read a press statement on May 18, 2022 in front of the Istanbul Çağlayan Courthouse before the hearing of the closure case against the Tarlabaşı Community Center. (Photo by Yıldız Tar/Kaos GL)

iv Challenges in Advocacy Against Administrative Harassment

This complicated and vague framework, together with the chilling effect produced by administrative audits, sanctions, and closure cases, impacts the ability and willingness of NGOs to share information and experiences with each other, as well as to engage in public advocacy on this issue. These factors may have affected this Report as well, and may contribute to the overall scarcity of documentation focused on administrative harassment against NGOs since the end of the state of emergency.[148] One NGO did not respond to multiple requests for an interview, and one respondent refused to share the amounts of the administrative fines their NGO was subjected to. Some respondents, meanwhile, were unable to respond to some of the questions on the audits, such as those regarding the auditing administrative body, due to a lack of information.

An HRD pointed out that "[o]rganisations do not know whether the auditor is from the governor's office, the ministry, tax office, or social security office. Now others from the

145 Kaos GL, Human Rights of LGBTI+ People in Turkey: 2019 Report (May 2020). Available at: https://kaosglder-negi.org/images/library/2020human-rights-of-lgbti-people-2019-report-1.pdf.

146 See "Box #2 – Stigmatisation of LGBTI+ Rights Defenders" in supra, note 7.

147 Meral Candan, 'İstanbul Sözleşmesi'nden çekilmek kapatma davalarını kolaylaştırdı', Gazete Duvar (April 30, 2022). Available at: https://www.gazeteduvar.com.tr/istanbul-sozlesmesinden-cekilmek-kapatma-davalarini-kolaylastirdi-haber-1562856.

148 For instance, of the 230 NGOs that received a questionnaire prepared by Amnesty International on Law No. 7262, only 23 NGOs responded. See supra, note 113.

administration can [conduct audits] too. But we need to know to advocate for ourselves. Civil society feels powerless in the face of lack of information."[149] Capacity-building activities focused on the administrative and financial framework have increased in civil society over the past couple of years to support NGOs. More is needed on this front, particularly legal and administrative consultancy that is tailored and available to NGOs facing audits and funding for them, so that NGOs are equipped with the relevant information to push back against the arbitrary practices of individual auditors.

Solidarity and communication networks between NGOs are crucial platforms to share information, prepare for audits, and coordinate advocacy vis-à-vis the administration, and have proven quite useful since Law No. 7262's enactment. However, they also carry the risk of unintentionally spreading misinformation, due to arbitrary implementation and varying local practices, and thus, may lead to unnecessary or inadequate preparation, and to stress. Moreover, NGOs are reluctant to publicly advocate in regard to the administrative audits and sanctions they face, "so as to not be more visible, not to draw further attention. For example, [organisations] think that if they publicly share the imposed sanction, they will surely face another audit, and share [information] privately. This is something caused by the climate of fear."[150] One NGO representative stated that this climate, together with the chilling effect of judicial harassment, has impacted cooperation between NGOs: "When you expand your self-control, the scope of your impact is limited. … It atomizes you in civic space. … Büyükada also affected this a lot."[151] Finally, NGOs are reluctant to publicly share this information for fear that it will reflect badly on the organisation and damage its reputation. But one HRD inquired, "We know they are [auditing] dissident associations to find mistakes. So then why don't we turn this into advocacy?"[152] Closure cases against TTM and KCDP are two examples in which publicising the harassment has led to wide support and solidarity by other civil society actors, including through domestic and international advocacy.

B. Administrative Harassment Against HRDs

Administrative harassment is used against not only NGOs but also HRDs, to unlawfully restrict the exercise of the rights to freedom of assembly and association and to freedom of expression.[153] It can take different forms, including administrative fines, dismissals from public duty, denial of a license to practice one's profession, and disciplinary proceedings, and often also violates the economic and social rights of HRDs, frequently with no effective remedy being available. The violations against HRDs that took place during the state of emergency and its aftermath have been documented extensively by human rights groups.[154] Aiming to complement rather than repeat existing studies, this section will focus on recent

149 Interview no. 13 with HRD, online, March 2, 2022.

150 Ibid.

151 Interview no. 10 with Kerem Dikmen, lawyer and Legal Coordinator of Kaos GL Association, online, February 18, 2022. For the Büyükada trial, see The Observatory, Turkey: Four human rights defenders convicted under terrorism charges (July 6, 2020). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-four-human-rights-defenders-convicted-under-terrorism-charges.

152 Interview no. 13 with HRD, online, March 2, 2022.

153 Administrative harassment against NGOs can simultaneously impact individual HRDs serving on executive boards, as many administrative fines are imposed directly on the chair of the NGO. See, e.g. supra, note 115.

154 Hüsnü Öndül, Emergency Decree Laws and Their Impact on Human Rights in Turkey, İHD (May 2022). Available at: https://ihd.org.tr/en/wp-content/uploads/2022/05/EmergencyDecreeLawsReport.pdf; İHD, 2017 Balance-Sheet of Human Rights Violations in Turkey (April 2018). Available at: https://ihd.org.tr/en/wp-content/uploads/2018/05/IHD_2017_report-2.pdf; TİHV, Academic Purge in Turkey: Human Rights Violations, Losses, and Empowerment (2019). Available at: https://tihvakademi.org/wp-content/uploads/2020/02/Academic_Purge_in_Turkey_Executive_Summary.pdf; Amnesty International, Weathering The Storm: Defending human rights in Turkey's climate of fear (April 2018). Available at: https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4482002018ENGLISH.pdf; supra, note 7; International Commission of Jurists, Justice Suspended: Access to Justice and the State of Emergency in Turkey (2018). Available at: https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf. For a recent report documenting, among others, administrative harassment against HRDs in Turkey, see Banu Tuna et al., Keep the Volume Up: Intimidation Policies Against Rights Defenders 2015-2021, Truth Justice Memory Center (May 2022). Available at: https://www.sessizkalma.org/sites/www.sessizkalma.org/files/belgeler/2022-05/keep-the-volume-up-intimidation-policies-against-rights-defenders-2015-2021.pdf.

developments in the implementation of problematic bodies of laws since the end of the state of emergency, as well as on case studies that are emblematic of administrative harassment against HRDs, with a focus on HRDs' own testimonies on the impact of this practice.

a. Administrative Acts and Sanctions Concerning Meetings and Demonstrations

Administrative fines under the Law on Misdemeanours No. 5326 have been used against HRDs attending protests, and the ECtHR has ruled that this is an unlawful restriction of Article 11 of the Convention.[155] These were particularly common during the state of emergency, during which public servants protesting their dismissal were regularly targeted with fines for "disobeying orders" of the administration given under the Law on Meetings and Demonstrations No. 2911.[156] Since March 2020, HRDs have been further targeted under the legal framework pertaining to Covid-19 measures, with administrative fines imposed under both the Law on Misdemeanours and the Law on Public Health No. 1593. İHD has reported that measures to combat the Covid-19 pandemic unlawfully restrict fundamental rights and freedoms, as they are mostly regulated under circulars granting wide authority to the administration, thus violating the principles of legality and legal certainty, and administrative fines for failing to abide by these measures similarly lack a legal basis and should be annulled.[157] Nevertheless, TİHV documented that between March 11, 2020, when the first Covid-19 case was announced in Turkey, and February 28, 2022, a total of 666 persons were fined a total of 1,820,900 TRY (approx. 117,200 EUR).[158] Among them are many HRDs: between March 1 to August 31, 2021 alone, 290 HRDs were imposed a total of 909,598 TRY (approx. 50,800 EUR), in administrative fines, for participating in meetings and demonstrations.[159]

In 2022, the administrative fines most often imposed against HRDs under the two laws range from 277 to 18,028 TRY (approx. 17 to 1,160 EUR).[160] The ECtHR points out that even if the amount of the administrative fine may seem trivial at first, this has to be re-assessed in light of the income of the person fined, as it may still have significant impact on their financial situation.[161] This is important to note, considering that many people who were fined since the state of emergency were dismissed from their jobs, and that over 90% of the population in Turkey currently lives below the poverty line due to the economic crisis.[162] Moreover, in the past few years, repetitive fines that add up to excessive amounts have been imposed against many protesters, including HRDs, that have had a devastating financial impact on the

155 ECtHR, Case of Öğrü v. Turkey, Application No. 19631/12 (October 17, 2017). Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177657%22]} and Case of Akarsubaşı v. Turkey, Application No. 70396/11 (July 21, 2015). Available at: https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22FRE%22],%22appno%22:[%2270396/11%22],%22documentcollectionid2%22:[%22CHAMBER%22],%22itemid%22:[%22001-156266%22]}. See also ECtHR, Case of Yılmaz Yıldız and Others v. Turkey, Application No. 4524/06 (October 14, 2014). Available at: https://hudoc.echr.coe.int/eng#{%22appno%22:[%224524/06%22],%22itemid%22:[%22001-147470%22]}.

156 İHD, Report on Increased Pressures on Human Rights Defenders, Human Rights Association and its Executives (May 31, 2019). Available at: https://ihd.org.tr/en/wp-content/uploads/2019/06/20190531_Special-ReportOnHRAHRDs.pdf; Association for Monitoring Equal Rights (Eşit Haklar için İzleme Derneği, "EŞHİD"), Toplantı ve Gösteri Hakkı İzleme Raporu 2017 (2018). Available at: https://www.esithaklar.org/wp-content/uploads/2019/06/Toplanti_Gosteri_Hakki_2017.pdf; "Restrictive Legal Environment" in supra, note 4.

157 İHD, Enkaz Kaldırma Çalışmaları: Covid-19 ile Mücadele Kapsamında Alınan Tedbirlerin Yasallığı ve İdari Para Cezaları (August 12, 2020). Available at: https://www.ihd.org.tr/wp-content/uploads/2020/08/20200811_IHD-Kovid19TedbirleriRaporu.pdf.

158 TİHV, 11 Mart 2020 ile 28 Şubat 2022 tarihleri arasında Covid-19 salgını ile ilişkili hak ihlalleri raporu (March 2022). Available at: https://tihv.org.tr/wp-content/uploads/2022/03/TIHV_covid_hak_ihlalleri_rapor_Mart_2022.pdf.

159 TİHV, Fact Sheet (March 1-August 31, 2021), supra, note 2.

160 Directorate General of Security, Administrative Fines for the Year 2022. Available at: http://www.asayis.pol.tr/2022-yili-idari-para-cezalari.

161 Case of Öğrü v. Turkey, supra, note 155, para. 17.

162 Duvar English, Amidst economic crisis, 90 percent of Turkey's population live below poverty line, report shows (March 16, 2022). Available at: https://www.duvarenglish.com/amidst-economic-crisis-90-percent-of-turkeys-population-live-below-poverty-line-report-shows-news-60626#:~:text=More%20than%2076.5%20million%20people,Consumer%20Rights%20Association%20(THD).

individuals concerned, and have produced a broader chilling effect on civil society at large. The ECtHR notes that beyond the financial impact of the administrative fine on the applicant, the applicant being an HRD must be taken into account, as in this case the violation can have a serious impact on the exercise of the right to freedom of assembly.[163]

Recent years have seen examples of several HRDs, many of them labour rights defenders, environmental defenders, and women and LGBTI+ rights defenders, harassed via administrative fines that are at times so exorbitant that they are clearly disproportionate, and appear to serve no purpose other than to penalise the defence of human rights. Since 2019, members of the Mersin Women's Platform (*Mersin Kadın Platformu*) have been fined over 120,000 TRY (approx. 7,720 EUR) under the Law on Misdemeanours and the Law on Public Health, for protesting femicide and Turkey's withdrawal from the Istanbul Convention.[164] In November 2020, 15 women, all members of the Dersim Women's Platform (*Dersim Kadın Platformu*), were fined 3,150 TRY (approx. 200 EUR) each under the Law on Public Health for making a press statement in protest of a case of sexual harassment.[165] Environmental activists protesting the Canadian gold mine project in the Kaz Mountains were fined over 500,000 TRY (approx. 32,180 EUR) by the end of 2020 for alleged violations of Covid-19 restrictions set by the governor's office, including "having a picnic, lodging and flying drones in the forest."[166] In January 2021, nine workers protesting their dismissal from the Cargill factory in Bursa for unionising, were fined 8,100 TRY (approx. 520 EUR) on the basis of violating the curfew on the 1,000th day of their demonstration.[167] In August 2021, Ferit Şenyaşar, who survived the armed attack by AKP MP İbrahim Halil Yıldız's bodyguards and relatives in 2018 in Urfa, which killed his father and two brothers, was fined under the Misdemeanours Law for hanging banners during the 157th day of the Şenyaşar family's justice watch for accountability for the attack.[168] A 22-year-old student, whose state scholarship – like many others[169] – was cancelled by the Student Loans and Dormitories Institution on the grounds that they attended the Boğaziçi University protests, was left with 17,000 TRY (approx. 1,090 EUR) of debt; the student was then fined 13,237 TRY (approx. 850 EUR) in June 2021 under the Law on Misdemeanours for hanging a banner in protest of the annulment of the scholarship.[170] Nazan Bozkurt, one of the protesters of Yüksel Street who has been demanding their job back after being dismissed by a decree in 2017, has been imposed over 700 administrative fines under the Law on Misdemeanours for exercising their right to freedom of assembly.[171] Despite court decisions annulling these fines, in September 2021 the Tax Office attached Bozkurt's bank account for an alleged debt of 281,330.39 TRY (approx. 18,100 EUR). In February 2022, five LGBTI+ activists, all Kurdish trans women, were fined 3,500 TRY (approx. 225 EUR) under the Law on Public Health for attending a women's meeting and reading a press statement

163 Case of Öğrü v. Turkey, supra, note 155.

164 Keep the Volume Up, Mersin Women's Platform. Available at: https://www.sessizkalma.org/en/defender/mersin-womens-platform/; Kısa Dalga, Mersin Kadın Platformu Üyesi Serin: "Eylem anayasal hakkımız, para cezalarını ödemeyeceğiz" (May 8, 2021). Available at: https://kisadalga.net/haber/detay/mersin-kadin-platformu-uyesi-serin-eylem-anayasal-hakkimiz-para-cezalarini-odemeyecegiz_6251.

165 İHD Diyarbakır, 2020 yılı Doğu ve Güneydoğu Anadolu Bölgesi İnsan Hakları İhlalleri Raporu (February 11, 2021). Available at: https://www.ihd.org.tr/wp-content/uploads/2021/02/2020Y%C4%B1l%C4%B1-%C4%B0nsan-Haklar%C4%B1-%C4%B0hlalleri-Raporu.pdf.

166 See "Environmental Rights Defenders" in supra, note 4; "Box #3 – Judicial Harassment of Civil Society Actors and HRDs During the Covid-19 Pandemic" in supra, note 7.

167 EŞHİD, Barışçıl Toplantı ve Gösteri Hakkı Bülteni Ocak-Mayıs 2021 (June 2021). Available at: https://www.esithaklar.org/wp-content/uploads/2021/06/ESHID_ToplantiGosteriBulten_2021_OcakMayis.pdf.

168 Bianet, Police fine Şenyaşar Family over their banner (August 13, 2021). Available at: https://bianet.org/english/human-rights/248699-police-fine-senyasar-family-over-their-banner.

169 Bianet, Boğaziçi University: Stay of execution for termination of scholarships (June 28, 2021). Available at: https://bianet.org/english/law/246381-bogazici-university-stay-of-execution-for-cancellation-of-scholarships.

170 Sendika.org, KYK kredi borcunu protesto eden öğrenciye 13 bin lira para cezası (January 18, 2022). Available at: https://sendika.org/2022/01/kyk-kredi-borcunu-protesto-eden-ogrenciye-13-bin-lira-para-cezasi-643877/.

171 Ayça Söylemez, Tax office levies attachment on protestor's bank account over her press statements, Bianet (September 27, 2021). Available at: https://bianet.org/english/law/250903-tax-office-levies-attachment-on-protestor-s-bank-account-over-her-press-statements.

on March 6, 2021 in Istanbul.[172] As discussed further in the next chapter, many of these administrative harassment cases are accompanied by judicial harassment.

Box #5 – Meetings and demonstrations in Van banned for over five years

In an example of the Turkish government's extreme security policies in the Kurdish region and of its permanent state of emergency measures,[173] all meetings and demonstrations in the city of Van have been banned continuously through back-to-back governor's orders announced on the governor's website every 15 days since November 21, 2016, under Law No. 2911.[174] Every order is based on the same vague reasoning, including "ensuring national security," "protecting public order and general health," and "preventing the commission of crimes."[175]

Under this ban, HRDs are not allowed to hold any meetings or demonstrations outside. One HRD stated, "The ban on meetings and demonstrations in Van and the harassment [by authorities] reached a serious level… We don't want to argue with the police whether we should have [the press statement] inside or outside anymore. You cannot defend human rights this way, you need to undertake different types of work, but Van doesn't allow us… The judiciary doesn't provide a solution either."[176] Indeed, 14 annulment cases filed by the Van Bar Association since 2018, as well as cases by individuals, have been rejected by first and second-degree administrative courts, and an individual application made to the Constitutional Court is pending.[177] Even if one or more of these bans end up being annulled, this will not in practice prevent the governor from adopting new bans, as each ban constitutes a separate "administrative act" against which a separate annulment case must be filed; indeed, these proceedings do not appear to meet the standards required for a remedy to be considered effective.[178]

The ban is especially used to silence HRDs: "The way that these bans are implemented is also arbitrary and discriminatory. For instance, as organisations that defend human rights,

172 Bianet, Five trans women fined over March 8 demonstration (February 9, 2022). Available at: https://m.bianet.org/english/women/257468-five-trans-women-fined-over-march-8-demonstration. Administrative fines under the Law on Misdemeanours are used widely to harass all trans people, especially sex worker trans women, not only those who are HRDs. See Nihan Erdoğan, "The Arbitrary Nature of Administrative Fines and Their Impact on Sex Workers" in "Restricted Justice": Report on Legal Support to Sex Worker Trans Women Suffering from Rights Violations, Red Umbrella Sexual Health and Human Rights Association (December 2014). Available at: http://kirmizisemsiye.org/wp-content/uploads/2021/07/HAK-IHLALLERINDEN-YARARLANAN-SEKS-ISCISI-TRANS-KADINLARINA-YASAL-DESTEK-RAPORU.pdf. The ECtHR, in a much-criticised decision, ruled that an application by three sex worker trans women who were imposed an administrative fine for "wearing ladies' clothes" was inadmissible on the basis that the amount of the fines were low. ECtHR, Şimşek, Andiç and Boğatekin v. Turkey, Application Nos. 75845/12, 79989/12 and 75856/12 (March 17, 2020). Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202866%22]}.

173 See also "Box #3 – Blanket Bans on LGBTI+ Assemblies in Ankara" in supra, note 4.

174 TİHV, 1 Ocak ile 31 Ağustos 2020 tarihleri arasında ifade, toplanma ve örgütlenme özgürlükleri ihlal raporu (October 2020). Available at: https://tihv.org.tr/wp-content/uploads/2020/10/I%CC%87fadeToplanmaOrgutlenmeRapor.pdf. Similar uninterrupted bans on meetings and demonstrations are imposed in Batman, Bitlis, Elazığ, Hakkari, and Siirt. EŞHİD, Barışçıl Toplantı ve Gösteri Hakkı Bülteni Ekim-Aralık 2021 (February 2022). Available at: https://www.esithaklar.org/wp-content/uploads/2022/02/%F0%9F%93%A2-Baris%CC%A7c%CC%A7il-Toplanti-ve-Go%CC%88steri-Hakki-Bu%CC%88lteni-Ekim-Aralik-2021.pdf.

175 Bianet, 5-year demonstration ban in Van extended again (May 3, 2021). Available at: https://bianet.org/english/freedom-of-expression/243444-5-year-demonstration-ban-in-van-extended-again.

176 Interview no. 8 with Association of Lawyers for Freedom Van Branch, online, February 17, 2022.

177 EŞHİD, Anayasal bir hak Van'da beş yıldır yasak (June 6, 2021). Available at: https://www.esithaklar.org/2021/06/podcast-yasaksiz-meydan-14-vanda-neler-oluyor-av-mahmut-kacan/; Felat Bozarslan, Van'da 5 yıldır bitmeyen "OHAL," DW Türkçe (December 7, 2021). Available at: https://www.dw.com/tr/vanda-5-y%C4%B1ld%C4%B1r-bitmeyen-ohal/a-60046678; Sertaç Kayar, Van'da 5 yılı aşkın süredir kesintisiz süren eylem ve etkinlik yasağı Anayasa Mahkemesi'ne taşındı, Sputnik Türkiye (December 9, 2021). Available at: https://tr.sputniknews.com/20211209/van-da-5-yili-askin-suredir-kesintisiz-suren-yasak-anayasa-mahkemesine-tasindi-1051609346.html.

178 A similar practice is observed in bans against the LGBTI+ Pride March in Istanbul. Despite bans annulled by administrative courts, a new ban is imposed every year. Hatice Demir & Özge Nur Kara, "Her Haziran Yasak Var İstanbul'da: 2019'a Bakış" in LGBTİ+'ların Hukuk Gündemine (İçeriden) Bir Bakış: 2019-2020, Social Policy, Gender Identity and Sexual Orientation Studies Association (SPoD) (December 2020). Available at: https://spod.org.tr//wp-content/uploads/2022/03/LGBTI%CC%87larin-Hukuk-Gu%CC%88ndemine-I%CC%87c%CC%A7eriden-Bir-Bakis%CC%A7.pdf.

we cannot hold demonstrations. But AKP or the governor can, they are allowed. Even if it's very rare, sometimes CHP's [meetings and demonstrations] are allowed, and some of HDP's mass demonstrations, such as March 8, Newroz or September 1. This is interesting too. But other than these, [HRDs] always have to hold press statements indoors, we cannot have them outside."[179] For instance, while the AKP held an uninterrupted meeting and march on November 25, 2021 in the centre of Van without limitations, others, including HRDs, civil society, and opposition parties, were restricted. Repetitive administrative fines are also imposed against HRDs under the Law on Misdemeanours for "disobeying orders" of the governor,[180] in addition to judicial harassment.[181]

The same HRD explains the impact of the continuous ban, which also stifles HRDs' efforts to advocate against it: "We hold demonstrations so that people see it, so there is awareness. What is important is to mobilise the masses, to have the public hear [about the cause of the demonstration]. Even if we hold these statements [indoors], very few media agencies cover them, and it is evident who follows these agencies [people who are already aware of the cause]. … We hold a press statement, but no one hears about it. We are tired of this. People say there is a ban in Van, and no one is raising their voice, but actually we do; no one hears us."[182]

HRDs representing over ten professional associations and CSOs read a press statement at the Van Bar Association on October 27, 2021 in protest of the demonstration ban in Van. (Photo by MA)

179 Interview no. 8 with Association of Lawyers for Freedom Van Branch, online, February 17, 2022.

180 Peace Mothers, among many others, were fined under the Law on Misdemeanours in 2019 in Van for attending protests held to draw attention to hunger strikes in prisons. TİHV, 01-10 Haziran 2019 Günlük İnsan Hakları Raporu (June 2019). Available at: https://tihv.org.tr/gunluk-ih-raporlari/01-10-haziran-2019-gunluk-insan-haklari-raporu. Since 2019, Ali Kalçık, chair of the Van Environment, Historical Works Conservation, Research and Development Association (Van Çevre, Tarihi Eserleri Koruma Araştırma ve Geliştirme Derneği - ÇEV-DER), was imposed four separate administrative fines for press statements on environmental issues held in Van. One of these fines was annulled by the criminal peace judgeship on the basis that "it is not necessary in a democratic society and has chilling effect." Şenol Balı, Van'da yasaklar devam ediyor: Çev-Der Başkanı Ali Kalçık'a iki yılda dört ayrı ceza, Media and Law Studies Association (MLSA) (November 29, 2021). Available at: https://www.mlsaturkey.com/tr/cevre-sorunlari-hakkinda-basin-aciklamasi-yapan-van-cev-der-baskani-ali-kalcika-iki-yil-da-dort-ayri-idari-para-cezasi-verildi. The Constitutional Court ruled in 2022 that administrative fines imposed against three protestors in Dersim for "disobeying orders" under the Law on Misdemeanours, due to a 30-day ban on meetings and demonstrations, violated the applicants' right to hold meetings and demonstration marches. Constitutional Court, Sezai Bulut and Others, Application No. 2019/38616 (February 22, 2022). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/38616.

181 On October 25, 2021, police dispersed people gathered in front of the Van Yüzüncü Yıl University Dursun Odabaşı Hospital for a press statement to protest the heavy working conditions of health workers. Then President of the Van-Hakkari Medical Chamber and doctor at the TİHV Van Representation Dr. Hüseyin Yaviç and TİHV Van Representative Sevim Çiçek were detained and later released; they are still facing trial under charges of disobeying the Law No. 2911. İHD Diyarbakır, 2021 Yılı Doğu ve Güneydoğu Anadolu Bölgesi Kadınlara Yönelik Hak İhlalleri Raporu (April 19, 2022). Available at: https://ihddiyarbakir.org/Content/uploads/ec11c158-5de1-4b86-9039-8551317fcfb2.pdf; TİHV, Rümeysa Doktoru Andıkları için Yargılanıyorlar (May 25, 2022). Available at: https://tihv.org.tr/duyurular/rumeysa-doktoru-andiklari-icin-yargilaniyorlar/.

182 Interview no. 8 with Association of Lawyers for Freedom Van Branch, online, February 17, 2022.

HRDs are also harassed under other administrative frameworks applicable to them, for exercising their right to freedom of assembly. In 2021, the student loans and state scholarships of over 150 students who participated in the Boğaziçi University and the We Cannot Take Shelter Movement protests were cancelled by the authorities.[183] While courts stayed the execution in a few cases, some students were not even notified or provided with an official document, and thus unable to object to this decision.[184] 19 Boğaziçi University students were suspended for attending the protests, and there are reportedly disciplinary proceedings against nearly 200 students.[185] The Boğaziçi University LGBTIA+ Studies Club (BÜLGBTİA +), a student club, was effectively shut down by the rectorate due to members' participation in the protests; the administrative court denied students' objection to this decision, and an appeal is pending.[186] On April 5, 2021, three Iranian refugee HRDs[187] were detained for attending a press statement held on March 20, 2021 in Denizli in protest of Turkey's withdrawal from the Istanbul Convention; the next day, in a blatant violation of the principle of non-refoulement under international law, the governor's office ordered their deportation.[188] In February 2022, the administrative court denied their objection to the deportation order, leaving an individual application to the Constitutional Court as the only available remedy.[189] Another Iranian refugee HRD's international protection application was denied after he complained to the Migration Management about the alleged complicity of the police with a gang that forces refugee women into sex work; he was detained in January 2022 and sent to the removal centre, and now faces a deportation order.[190] One of the police officers reportedly cooperating with this gang had threatened the HRD with "sending him to back to Iran."

b. Administrative Acts and Sanctions Restricting the Right to Work

Administrative harassment that targets HRDs' right to work continues, and also leads to their profiling, creating a strong chilling effect, particularly on public servants.[191] Another indication of permanent state of emergency rule, Statutory Decree No. 375 was amended in July 2018, a few weeks after the end of the emergency was declared, and its Temporary Article 35 gave the

183 Tuba Torun, 'We cannot find shelter' movement in Turkey, Duvar English (October 6, 2021). Available at: https://www.duvarenglish.com/we-cannot-find-shelter-movement-in-turkey-article-59090; Keep the Volume Up, Boğaziçi Solidarity. Available at: https://www.sessizkalma.org/en/defender/bogazici-solidarity; Melisa Elçin Özçelikel, Boğaziçi University: 100 students stripped of scholarships, loans for protesting rector, Bianet (June 23, 2021). Available at: https://bianet.org/5/97/246179-bogazici-university-100-students-stripped-of-scholarships-loans-for-protesting-rector; İlayda Gökçer, Barınma talebi 'terör' sayıldı, BirGün (March 4, 2022). Available at: https://www.birgun.net/haber/barinma-talebi-teror-sayildi-379269.

184 BirGün, Mahkeme, Boğaziçi protestolarına katıldığı için kredisi kesilen öğrenciyi haklı buldu (November 15, 2021). Available at: https://www.birgun.net/haber/mahkeme-bogazici-protestolarina-katildigi-icin-kredisi-kesilen-ogrenciyi-hakli-buldu-365905; İlayda Gökçer, Yaptırımlar keyfi, kararlar hukuksuz, BirGün (April 10, 2022). Available at: https://www.birgun.net/haber/yaptirimlar-keyfi-kararlar-hukuksuz-383585; BirGün, Boğaziçi eylemlerine katılan öğrencilerle ilgili karar: Sadece polisin bildirmesiyle öğrenim kredisi kesilemez (November 3, 2021). Available at: https://www.birgun.net/haber/bogazici-eylemlerine-katilan-ogrencilerle-ilgili-karar-sadece-polisin-bildirmesiyle-ogrenim-kredisi-kesilemez-364377.

185 Gazete Duvar, Naci İnci istemişti: 6 Boğaziçiliye uzaklaştırma cezası verildi (November 23, 2021). Available at: https://www.gazeteduvar.com.tr/naci-inci-istemisti-6-bogaziciliye-uzaklastirma-cezasi-verildi-haber-1542893; Keep the Volume Up, Feyzi Erçin. Available at: https://www.sessizkalma.org/en/defender/feyzi-ercin.

186 Yıldız Tar, Melih Bulu shut off the Boğaziçi LGBTI+ Studies Club!, Kaos GL (February 2, 2021). Available at: https://kaosgl.org/en/single-news/melih-bulu-shut-off-the-bogazici-lgbti-studies-club.

187 A fourth Iranian refugee who did not attend the press statement was also detained.

188 Ruth Michaelson & Deniz Barış Narlı, Iranian refugees face deportation from Turkey for attending demonstration, The Guardian (February 9, 2022). Available at: https://www.theguardian.com/global-development/2022/feb/09/iranian-refugees-face-deportation-from-turkey-for-attending-demonstration. The principle of non-refoulement shall be "fully observed under all circumstances" for refugee HRDs. See OSCE ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), para. 238. Available at: https://www.osce.org/files/f/documents/c/1/119633.pdf.

189 Dilek Gul, İstanbul Sözleşmesi eylemine katılan İranlı mültecilerin sınır dışı kararına itirazı reddedildi, EuroNews (February 3, 2022). Available at: https://tr.euronews.com/2022/02/03/istanbul-sozlesmesi-eylemine-kat-lan-iranl-multecilerin-s-n-r-d-s-karar-na-itiraz-reddedil.

190 Pınar Gayıp, İdam tehdidi altındaki Khajavi, sınır dışı edilecek, ETHA (April 27, 2022). Available at: https://etha39.com/haberdetay/idam-tehdidi-altindaki-khajavi-sinir-disi-edilecek-160095.

191 See "Dismissals in the Public Sector and the Profiling of Civil Society Actors" in supra, note 7. See also paras. 87-88 in supra, note 6.

administration the authority for a period of three years to dismiss public servants from duty based on their alleged "membership, affiliation, connection or contact" with terrorist organizations. The term was then extended to four years, to expire on July 28, 2022. The government continues to use this provision to target dissidents and HRDs. In November 2021, 21 teachers in Diyarbakır, members of the Eğitim-Sen union, more than 1,600 of whose members have been dismissed from 2016 until today, were dismissed under the same provision.[192] This provision is also widely used against physicians, among them HRDs.[193]

Box #6 – Administrative harassment against physician and HRD Benan Koyuncu

Benan Koyuncu, a physician, member of the Ankara Medical Chamber, member of the Health and Social Services Workers' Trade Union (SES), and a volunteer with TİHV, has repeatedly been subjected to administrative harassment due to her work as an HRD.[194] In 2019, her appointment as an emergency physician at the Çankırı State Hospital was blocked by the Ministry of Health on the grounds of a "security investigation and archive research" accusing her of "participating in public gatherings organised by terrorist organisations" and "disseminating terrorist propaganda on Twitter." In February 2020, the Ankara 12th Administrative Court established that this administrative investigation had no legal grounds, and reversed the decision not to appoint Dr. Koyuncu as a physician at the Çankırı State Hospital. This decision was upheld by the Ankara Regional Administrative Court in December 2020. Yet again on September 29, 2021, the Directorate General for Administrative Services of the Ministry of Health ordered the dismissal of Dr. Koyuncu from public service by Administrative Act No. 17834, thus forbidding Koyuncu to practice her profession as a physician at the Çankırı State Hospital. The decision was justified under the vague grounds of "connection, affiliation or membership to terrorist organisations" (Temporary Article 35 of Statutory Decree No. 375), but failed to provide any further reasoning.

Dr. Koyuncu states that the administrative harassment she experienced "made me more empathetic in terms of my [human rights] work. This [administrative harassment] is experienced by many people. I was unable to find a job in Ankara; because the hospitals in Ankara are more in the Ministry's sight, they were afraid to work with me. Since I'm an activist with the Ankara Medical Chamber, I wanted to stay in Ankara, and I was unemployed for four months here. It was especially challenging at this period. I got off more lightly thanks to the support and solidarity of the Medical Chamber. For many people ... it is much more traumatic, because they are alone. I had more support because I am experiencing this for the third time. I saw beautiful examples of solidarity during this period."[195]

Following the case filed by Dr. Koyuncu against her dismissal, the administrative court stayed the execution of the administrative act. Dr. Koyuncu, for whom "the worst punishment was being suspended from practice,"[196] was re-instated to her position at the Çankırı State Hospital in April 2022.[197]

192 Bianet, Twenty-one teachers dismissed over 'terror ties' despite being acquitted (December 1, 2021). Available at: https://bianet.org/english/law/254161-twenty-one-teachers-dismissed-over-terror-ties-despite-being-acquitted.

193 Türk Tabipleri Birliği, Sağlık Bakanlığı'nın Açtığı Kamu Görevinden Çıkarma Soruşturmaları Hakkında (July 2, 2021). Available at: https://www.ttb.org.tr/haber_goster.php?Guid=8a84a634-dcd8-11eb-9ad3-df7bc671e423.

194 The Observatory, Turkey: Administrative harassment against physician and rights defender Benan Koyuncu (November 18, 2021). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-administrative-harassment-against-physician-and-rights.

195 Interview no. 11 with Benan Koyuncu, physician and HRD, online, February 18, 2022.

196 Ibid.

197 Serkan Alan, 3 kez görevinden çıkarılan Koyuncu, yargı kararıyla 3'üncü kez işine döndü, Gazete Duvar (April 8, 2022). Available at: https://www.gazeteduvar.com.tr/3-kez-gorevinden-cikarilan-koyuncu-yargi-karariyla-3uncu-kez-isine-dondu-haber-1559680.

Academics are also frequently subjected to administrative harassment for their human rights work. Recently, the lectures of two Boğaziçi academics and HRDs were discontinued due to their support of the protests, with one returning to teach after the administrative court stayed the enforcement of the rectorate's decision.[198] Perhaps the most emblematic example of administrative and judicial harassment against academics is the case of Academics for Peace, where rights violations are ongoing.[199]

Box #7 – Academics for Peace: No effective remedy in sight

Following the establishment of the Inquiry Commission for State of Emergency Measures ("Inquiry Commission") in January 2017, Academics for Peace, like other groups whose members were dismissed from public service, were required to apply to the Inquiry Commission to appeal against their dismissal.[200] Constituted as an ad hoc administrative commission, whose decisions are subject to judicial review, the Inquiry Commission was criticised for its lack of independence and impartiality and its violations of due process.[201] According to its last report, by December 31, 2021, the Commission of Inquiry received a total of 126,783 applications and delivered decisions on 120,703 (approx. 95.2% of applications). [202] 15,999 applications concerning dismissal from public service were accepted; this means that only 12.7% of people dismissed from public service under the state of emergency can be reinstated to their duties pursuant to a Commission of Inquiry decision.

Among those whose applications were rejected are 375 Academics for Peace, who were notified of the decisions as of November 2021, five years after the dismissals began.[203] One of these academics, also an HRD, states that the Commission's rejection decision was unexpected, given that the Constitutional Court had ruled that the convictions of Academics for Peace for terrorism propaganda violated their freedom of expression:[204] "The Constitutional Court ruled 9 to 8 that there was a violation. Afterwards, some [criminal] cases were dropped. So we thought that the Commission of Inquiry would reinstate us. Some of our friends said we should prepare syllabi to make it in time for September. … Our applications were reviewed last [by the Commission]. … We thought the scenario in which all of our applications would be rejected was least likely, but everyone received rejections."[205] The decision rejecting her application makes reference to the administrative investigation conducted by the university that dismissed her. However, the university

198 Keep the Volume Up, Can Candan. Available at: https://www.sessizkalma.org/en/defender/can-candan; Feyzi Erçin, supra, note 185.

199 For background on the Academics for Peace, see "Box #8 – Harassment of Academics for Peace" in supra, note 7; TİHV, Academics for Peace: A Brief History (March 2019). Available at: https://www.tihvakademi.org/wp-content/uploads/2019/03/AcademicsforPeace-ABriefHistory.pdf.

200 In 2016, the ECtHR found an application submitted by a teacher dismissed by emergency decree inadmissible on the basis that domestic remedies – i.e. applications before administrative courts and the Constitutional Court – were not exhausted. The Inquiry Commission was established by the government as a remedial mechanism following criticism from the Council of Europe. See "Closure of Associations" in supra, note 7; ECtHR, Zihni v. Turkey, Application No. 59061/16 (November 29, 2016). Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Zihni%22],%22itemid%22:[%22001-169704%22]}.

201 International Commission of Jurists, Justice Suspended: Access to Justice and the State of Emergency in Turkey (2018). Available at: https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf; Turkey Human Rights Litigation Support Project, Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission (October 2019). Available at: https://www.turkeylitigationsupport.com/blog/2019/10/15/access-to-justice-in-turkey-a-review-of-the-state-of-emergency-inquiry-commissionnbsp; "Closure of Associations" in supra, note 7.

202 The Inquiry Commission on the State of Emergency Measures Activity Report (December 31, 2021). Available at: https://soe.tccb.gov.tr.

203 As of May 22, 2022. Academics for Peace, Rights Violations Against Academics for Peace. Available at: https://barisicinakademisyenler.net/node/314.

204 Constitutional Court, Zübeyde Füsun Üstel and Others Application, Application No. 2018/17635 (July 26, 2019). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635.

205 Interview no. 6 with HRD, online, February 15, 2022.

refuses to share the investigation's results. The HRD has applied to administrative courts to appeal the decisions of both the Commission and the university.

It is apparent that the Commission of Inquiry does not constitute an effective remedy, and that Academics for Peace will have to continue their legal struggle for years to come. They are effectively "condemned to uncertainty," and continue to suffer from the effects of the harassment they endured.[206] The academic describes the financial impact of her dismissal: "We lost all our economic resources after being dismissed. Spouses were dismissed simultaneously. You are a public servant, you have job security, you build your life accordingly. You draw loans. When the job security is gone… I was left with a pile of debt. It was very difficult for everyone economically."[207] She also describes the psychological and emotional impact: "It was very draining. We all received support, I received psychological treatment. … I had a feeling of uselessness, a feeling of 'what else can I do?'"[208] The stigmatisation and profiling attached to being dismissed by decree deepens the challenges: "[A company I worked with after being dismissed] didn't want to pay me because I was dismissed by a decree. Those who supported us felt under risk. There were people whose friends wouldn't answer their calls because the decree process is ongoing. What we call 'civil death'. There were people whose bank accounts were blocked. You start to be marginalised from every aspect of life. … When the employer Googles your name, it says that you've been dismissed by a decree. … This is a direct result of the administrative process."[209]

HRD lawyers often face threats and judicial harassment, including arbitrary detention and arrest, prosecutions, and convictions under the terrorism framework, in relation to their professional duties.[210] A new law introduced in 2020 that allows for multiple bar associations was perceived as a backlash to the prominent role lawyers and bar associations play in the defence of human rights, and was criticised for failing to follow international standards, including lawyers' right to form and join independent, self-governing professional associations.[211] In addition to legislative interference in bar associations' and the Union of Bar Associations of Turkey's (Türkiye Barolar Birliği - TBB) structure, the administration – sometimes with the participation of the TBB – targets the profession through denials of a license to practise law.

206 TİHV, Academics for Peace: Current Situation (November 19, 2021), p. 3. Available at: https://tihv.org.tr/wp-content/uploads/2021/11/AfP_Current_Situation_November_2021.pdf.

207 Interview no. 6 with HRD, online, February 15, 2022.

208 Ibid.

209 Ibid.

210 European Association of Lawyers for Democracy and World Human Rights (ELDH) et al., Press release issued by the legal Fact Finding Mission, taking place in Istanbul from September 15 to 20, 2021 to monitor and observe current mass trials against lawyers in Turkey (September 20, 2021). Available at: https://eldh.eu/en/2021/09/an-entire-profession-on-trial/. Human rights lawyer and member of the Progressive Lawyers' Association (*Çağdaş Hukukçular Derneği - ÇHD*) Ebru Timtik was arrested in September 2017, along with other lawyers from the People's Law Office (Halkın Hukuk Bürosu), and sentenced to 13 years and six months of imprisonment on terrorism charges. She died on August 27, 2020, on the 238th day of her hunger strike demanding her right to a fair trial. The Observatory, Turkey: Authorities are responsible for Ebru Timtik's death in custody (August 28, 2020). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-authorities-are-responsible-for-ebru-timtik-s-death-in-custody.

211 "Closing Space for Dialogue" in supra, note 7; Venice Commission & the Directorate General of Human Rights and Rule of Law of the Council of Europe on the July 2020 Amendments to the Attorneyship Law of 1969, CDL-AD(2020)029 (October 9, 2020). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)029-e. For international standards, see Basic Principles on the Role of Lawyers (September 7, 1990), para. 25. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers.

Box #8 – Lawyers without licenses

Since the end of the state of emergency, hundreds of individuals have been barred from starting their mandatory legal internships or removed from the bar roll by TBB or Ministry of Justice ("MoJ") decisions based on their dismissal by emergency decrees and/or investigations and prosecutions.[212] This number has been increasing disproportionately since the state of emergency, pointing to yet another remnant of emergency rule practices and another worrying trend of abuse of administrative authority affecting several HRDs.

Naim Eminoğlu, an HRD working at People's Law Office, a well-known law office that follows social cases, was arrested alongside many other lawyers 20 days after starting his internship in 2017 following a police operation against the law office. He was released in December 2019 and completed his internship. He was then convicted to six years and three months of imprisonment based solely on the statement of an anonymous witness, which is currently under review at the Court of Cassation.[213]

The MoJ objected to his license based on the criminal case. Even though TBB resisted the MoJ decision and issued the HRD's license, the MoJ filed a case against TBB's decision, also requesting a stay of execution order for the license. The HRD was informed of this process when the case filed by the MoJ was notified to him. Despite the HRD's request for a hearing, the administrative court granted the stay order without one. The TBB complied as it is obliged under law to implement the court decision. The HRD's request for appeal before the regional administrative court was also denied without sufficient reasoning. The case is now pending before the Council of State, while the HRD remains barred from practising as a lawyer since August 21, 2021.

On the impact of the harassment he experienced, the HRD states that "It had great impact, both psychologically and professionally. I was able to practice 3-4 months [before being arrested], I had over 100 clients, including social cases, such as Soma.[214] … Of course I continue my [human rights] work. Being a rights defender is not about a license. … However, I am barred from visiting prisons and defending in court. … You have issues entering the courthouse, they search you because you have to take the citizens' [i.e. non-lawyers'] entrance. … This also affects people's right to choose their lawyers and the right to a fair trial. People trust you and want you to be their lawyers. I had over 40 people issuing power of attorneys, but I was removed from the bar roll abruptly. And the bar association did not notify me [when they removed me from the roll]… Another lawyer whose license was seized was not even notified the request for the stay order by the administrative court. … If you continue practising without knowing [about the removal from the bar roll], you can be prosecuted under the Criminal Code for improperly undertaking public duty."[215]

212 For an overview of how this form of administrative harassment takes place, see Benan Molu & İdil Özcan, Lawyers Without Licences: Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession, Tahir Elçi Vakfı (August 2020). Available at: https://www.tahirelcivakfi.org/storage/files/ae36e3a1-90bd-44bf-8817-08321ade8533/Ruhsatsiz-Avukatlar---INGILIZCE-(1).pdf?utm_source=pocket_mylist; Joint statement on concerns about access to the legal profession and increasing disbarments of lawyers in Turkey (July 19, 2021). Available at: https://lawyersforlawyers.org/en/concerns-about-access-to-the-legal-profession-and-increasing-disbarments-of-lawyers-in-turkey/.

213 Ayça Söylemez, Reason for Trainee Solicitor's Arrest: Visiting North Korea, Bianet (January 18, 2019). Available at: https://bianet.org/english/law/204610-reason-for-trainee-solicitor-s-detention-visiting-north-korea; Ayça Söylemez, Arrested Lawyer Behiç Aşçı: What Changed in 6 Hours?, Bianet (November 1, 2018). Available at: https://bianet.org/english/law/202240-arrested-lawyer-behic-asci-what-changed-in-6-hours.

214 The mine explosion in Soma, Manisa on May 13, 2014 killed 301 workers. See Bianet, Soma mine explosion: Company owner will serve eight days in prison for every killed miner (April 8, 2022). Available at: https://m.bianet.org/english/law/260240-soma-mine-explosion-company-owner-will-serve-eight-days-in-prison-for-every-killed-miner.

215 Interview no. 3 with Naim Eminoğlu, HRD and lawyer whose license was seized, online, February 6, 2022.

He adds that this form of harassment also violates social and economic rights: "For those [lawyers without licenses] who have to earn money and work with people they don't know, this is a huge issue. The internship phase of being a lawyer is already exploitation, and being a worker lawyer is too. When [the license is seized] you are either terminated or forced to work like an intern. There is nothing else a law school graduate can do. You don't allow them to be a prosecutor, or an academic, or a lawyer. They convict you to hunger, you cannot have a family or a private life."[216]

C. The Interconnectedness of Administrative and Judicial Harassment

Administrative harassment against HRDs does not happen in a vacuum; it is closely connected with judicial harassment. Often acts and sanctions imposed by administrative bodies are based on investigations, prosecutions, and convictions, as in the closure case against KCDP,[217] which cites the detention of its executives. The opposite can also occur; in the case of TTM,[218] for instance, investigations were launched against its executives after administrative processes. These two forms of harassment are frequently intertwined, as in the cases of harassment faced by the Academics for Peace,[219] the Boğaziçi protesters,[220] İHD and its executives and members,[221] and hundreds of other HRDs that are detained at protests and released after being levied administrative fines. The judiciary is often complicit in the administration's harassment of HRDs who seek remedy against violations, as exemplified by the case of the lawyers without licenses.[222] Smear campaigns and stigmatisation of HRDs are also closely linked, and often constitute the basis for these two forms of harassment, while harassment in turn further deepens the stigmatisation. The Gezi and Büyükada cases are two examples in which intense smear campaigns perpetrated by state officials alleging, among other things, "terrorism," "treason," and "espionage," have influenced the judiciary and led to extreme criminal sanctions against HRDs; this demonstrates the role played by smear campaigns in the securitising discourse constructed around the defence of human rights.[223]

216 Ibid.
217 See "Box #4 – Closure cases against two associations after Law No. 7262's enactment" above.
218 Ibid.
219 See "Box #7 – Academics for Peace: No effective remedy in sight" above.
220 See "Administrative Acts and Sanctions Concerning Meetings and Demonstrations" above.
221 See "'CSOs faithful to our national sensitivities' vs. 'groups connected with foreign circles': Stigmatisation of Rights-Based NGOs and Foreign Funding" above.
222 See "Box #8 – Lawyers without licenses" above.
223 TİHV, Türkiye'de Güvenlikleştirme Söylem ve Pratikleri: Bileşenler, İşleyiş ve Sonuçlar (November 2021). Available at: https://tihv.org.tr/wp-content/uploads/2021/12/Guvenliklestirme_Soylem_ve_Pratikleri.pdf.

Police stand outside the Istanbul Çağlayan Courthouse during a protest against the court decision in the Gezi Park trial on April 26, 2022. The court had convicted eight rights defenders the day before. (Photo by: Ozan Kose/AFP)

The preceding chapters show that the methods and thus the impact of administrative harassment may differ according to the circumstances of the case and the individual HRD. In most cases, administrative harassment aims to intimidate and silence HRDs by exerting economic pressure via fines or by restricting HRDs' right to work, which may also cause their profiling and stigmatisation and intensify the chilling effect on them and civil society at large. Considering that many HRDs in Turkey were dismissed by decree, that most face financial difficulties under a worsening economic crisis, and that many HRDs work separate and even multiple jobs to maintain a living while continuing their human rights work, this impact is not to be underestimated. That civil society is seriously under-resourced, and civil society professionals have no job security under project-based grants, worsens the economic impact of administrative harassment. When combined with judicial harassment, the impact of administrative harassment is multiplied, both on the individual HRD or NGO and on the broader civil society.

It appears that administrative harassment is perceived as less of a threat by HRDs and NGOs in the Kurdish region, compared to those in the west of Turkey. This is because authorities more commonly use judicial harassment against Kurdish HRDs, with administrative harassment more ancillary to mass investigations and prosecutions. According to one HRD, a representative of Rosa Women's Association who continues to face harassment, this is because the state uses particular forms of harassment to pressurise different groups and deter their actions in line with its broader policies, such as security policies in the Kurdish region: "There are different methods to intimidate different people. [Administrative harassment in the region] will not give the state the ability to advertise about this. … They can't show off administrative harassment. … There is a different stick for everyone. They are trying to 'discipline' [HRDs in the west] through administrative sanctions."[224] Given the extreme consequences of judicial harassment, including years of deprivation of liberty, the impact of

224 Interview no. 9 with Gözde Engin from Rosa Women's Association, online, February 17, 2022.

administrative harassment is also felt less acutely by Kurdish HRDs. When asked whether they were impacted by the foreign funding discourse, the same HRD sarcastically stated, "We never even thought of that. We're already terrorists!"[225] Another HRD states, "There is directly judicial harassment in Van. … [Authorities] do not feel the need the complete it with administrative harassment afterwards."[226]

Box #9 – Judicial and administrative harassment against JinNews through access-blocking

A particular form of harassment and censorship perpetrated by both the administration and the judiciary against independent media is to block access to websites.[227] As per various laws and regulations under Turkish law, courts, criminal peace judgeships, prosecutor's offices and over 15 administrative bodies are vested with broad authority to issue or request orders for blocking access to websites and domain names, with over 500,000 websites blocked in Turkey as of March 2022.[228] Examples of recent news articles blocked in Turkey include those concerning police violence, corruption, nepotism, and sexual harassment.[229] Moreover, access to domain names of websites are blocked, thus blocking access to the website altogether; this particularly targets independent media.[230]

JinNews, a Kurdish women's news agency established in 2017, and a successor to other media institutions that were shut down by emergency decrees, faced access-blocking for the 43rd time in April 2022, while its application before the Constitutional Court remains pending.[231] The Information Technologies and Communication Institution also filed a criminal complaint against the news agency. Its reporters and editors have faced nearly 50 criminal cases for various articles: "Rather than imposing monetary fines and intimidating through sanctions, [harassment against Kurdish media] is aimed at completely criminalising us. [The state] doesn't see you as journalists, it criminalises you in every sense. It shuts down our website, detains and arrests us. We are journalists, we do rights-based journalism. But we almost don't have any friends who are not prosecuted. … There is serious intimidation in the society, and media is one of the areas in which this policy is implemented most seriously. We experience this even deeper being Kurdish and women."[232] On the impact of the harassment they face, a JinNews reporter states: "The access-blocking prevents us from getting our voice heard, and it also has a serious cost because we need to open a new website every time. … It affects motivation, but we have

225 Ibid.

226 Interview no. 8 with Association of Lawyers for Freedom Van Branch, online, February 17, 2022.

227 Venice Commission, Opinion on Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication ("The Internet Law"). CDL-AD(2016)011 (June 15, 2016). Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)011-e.

228 Yaman Akdeniz & Ozan Güven, Fahrenheit 5651: The Scorching Effect of Censorship, Engelliweb (2020). Available at: https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf; Sendika.org, Reklam Kurulu'na "tüketiciyi koruma" bahanesiyle sansür yetkisi (March 25, 2022). Available at: https://sendika.org/2022/03/reklam-kurulu-na-tuketiciyi-koruma-bahanesiyle-sansur-yetkisi-650877/.

229 Sinem Aydınlı & Erol Önderoğlu, BİA Medya Gözlem Raporu Ekim-Kasım-Aralık 2021, Bianet (January 10, 2022). Available at: https://bianet.org/1/10/255838-gun-gun-uc-aylik-medya-ifade-ozgurlugu-ihlalleri; Bianet, Highest number of content removal orders in Turkey target news on corruption, irregularities (January 27, 2022). Available at: https://bianet.org/english/media/256872-highest-number-of-access-blocks-in-turkey-target-news-on-corruption-irregularities.

230 For blocked domains belonging to media, see Akdeniz & Güven, supra, note 228.

231 Şerife Ceren Uysal, Jin News Agency: "On the path to truth with a woman's pen" in Turkey Indictment Project, PEN Norway (November 25, 2021). Available at: https://norskpen.no/wp-content/uploads/2022/03/PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf; Sibel Yükler, BTK kıskacındaki JinNews, AYM'ye başvurdu, Free Web Turkey (April 6, 2022). Available at: https://www.freewebturkey.com/btk-kiskacindaki-jinnews-aymye-basvurdu/. The Constitutional Court ruled that the access-blocking of another news website, sendika.org, violated the freedom of press; the decision came nearly five years after the blocking decision. Constitutional Court, Ali Ergin Demirhan Application, Application No. 2015/16368 (March 11, 2020). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/16368.

232 Interview no. 4 with JinNews, online, February 8, 2022.

been facing this for a long time and we have a practice and tradition of fighting this, we are not strangers to [acts of harassment]. But it has become systematic."[233] She adds that solidarity with Kurdish journalists must be strengthened at both the local and the international level, particularly by institutions that monitor press freedom: "For example, when another journalist is detained, we see that it has wider coverage, there is more solidarity. Court cases are monitored, journalist groups react. But when it comes to us, there is a perception as if what we are going through is normal. [This causes] both the judiciary and the state to increase the pressure."[234]

What is cause for particular concern for Kurdish HRDs, especially following Law No. 7262, which references the terrorism framework, is the appointment of trustees to or the involuntary dissolution of NGOs. Many NGOs in the region were shut down with emergency decrees following the coup attempt. In another example of judicial harassment following administrative harassment, HRDs' membership in the Sarmaşık Association for Struggle against Poverty and Sustainable Development (*Sarmaşık Yoksullukla Mücadele ve Sürdürülebilir Kalkınma Derneği*), which was shut down by an emergency decree, was later included as evidence of alleged criminal behaviour in trials.[235]

Law No. 7262 is cause for concern since it lays the basis for administrative harassment following judicial harassment through the appointment of trustees to, or the suspension of activities or dissolution of, associations whose executives are prosecuted on the basis of terrorism, especially because of the judiciary's track record of systematically criminalising HRDs and institutions in the region following the determination that one institution is illegal. The wave of judicial harassment following the criminalisation of the Democratic Society Organisation (*Demokratik Toplum Kongresi - DTK*), an umbrella organisation for Kurdish rights groups, is a prominent example of this.[236] One HRD from the region stated, "If everyone in the executive board is tried for membership [in an illegal organisation], just as they see DTK as a terrorist organisation now, they can do the same to us."[237]

233 Ibid.

234 Ibid.

235 See "Closure of Associations" in supra, note 7. The Constitutional Court ruled that membership or participation in the activities of a legal organisation being used as evidence in the applicants' conviction for membership in a terrorist organisation violates the freedom of association. Constitutional Court, Ahmet Urhan Application, Application No. 2014/13961 (October 9, 2019). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/13961; Tüncay Yıldız and Others Application, Application No. 2014/12717 (January 8, 2020). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/12717; Hakan Yılmazöz Application, Application No. 2017/37725 (January 3, 2020). Available at: https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/37725. Nevertheless, Dr. Selim Ölçer was sentenced to 2 years and 1 month of imprisonment in October 2021 for "knowingly and willingly aiding a terrorist organisation" due to his role as executive at the Sarmaşık Association. Keep the Volume Up, Selim Ölçer. Available at: https://www.sessizkalma.org/en/defender/selim-olcer.

236 For details, see fn. 78 in supra, note 7.

237 Interview no. 9 with Gözde Engin from Rosa Women's Association, online, February 17, 2022.

Box #10 – Continued judicial and administrative harassment against Rosa Women's Association[238]

Rosa Women's Association, established in Diyarbakır after women's organisations were shut down in the Kurdish region with emergency decrees, has been subjected to ongoing judicial and administrative harassment since May 2020.[239] In addition to the arbitrary detention and arrest of Rosa executives and members, the association office has been searched twice and records were confiscated in 2020. The association's bank account was also frozen by MASAK for two months.

Rosa also faced an administrative audit in 2021. One Rosa member describes the process leading up to the audit: "When we heard that there will be an administrative audit, we became hypervigilant. We were asking the [Directorate for Civil Society Relations] for information every day, to make sure we're not missing anything, and even then some things you can't take care of. So we were thinking we will have no choice but to pay [a fine]. Especially after hearing of astronomical fines… They already have a problem with Rosa, they will do this too."[240] The audit was complicated due to ongoing judicial harassment against Rosa: "The process developed backwards in our case. [Association records that were seized during the police operation in 2020] included the association's books and even project documents. The prosecutor's office confiscated them, we requested the prosecutor's office to make copies of them and return the originals to us because we need to submit them to the [Directorate for Civil Society Relations], but they didn't. The court didn't either. So we couldn't complete our records. … Only when the auditors arrived from Ankara, we notified them of what happened, and they requested the records from the court. That's when we were able to see where we left off [with recordkeeping]. … The auditors studied the records in detail. They said it was a routine audit but they were aware of all of the proceedings launched against us."[241] A small administrative fine was imposed for failing to timely file a membership status notification, which was delayed due to ongoing police operations (including against Rosa) at the time; the person responsible for filing the notification was a suspect in one of those operations. The HRD adds: "They didn't tire us out with the administrative processes since they already did what was necessary through [judicial harassment]. Everyone [in the association] is dismissed by decree, everyone is without a job. These are people that have already experienced administrative harassment. Now, the fine will be imposed against the individuals, but we have to pay for it [as an organisation]. It was very stressful. We all waited for that audit for a while. … If we received an [exorbitant] fine, we would be paralysed and would need to raise funds and that could return as an indictment one day. We would have applied to organisations that support human rights organisations [financially] to pay for it. They could connect us with them, and maybe criminalise them. This vague provision of terrorism financing creates this spiral."[242] These quotes paint a clear picture of how various forms of harassment influenced by the state's security policies in the Kurdish region are used against HRDs to exert pressure from various directions in an attempt to silence them.

238 "Box #4 – Judicial Harassment of Rosa Women's Association" in supra, note 4.

239 Ibid.; The Observatory, Turkey: Arbitrary detention of WHRDs and judicial harassment of Rosa Women's Association (May 27, 2020). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-detention-and-judicial-harassment-of-rosa-women-s; The Observatory, Turkey: Multiple arbitrary detentions in Diyarbakır (June 30, 2020). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-multiple-arbitrary-detentions-in-diyarbakir; The Observatory, Turkey: Arbitrary detention and judicial harassment of several women's rights defenders in Diyarbakır (July 24, 2020). Available at: https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-detention-and-judicial-harassment-of-several-women-s; The Observatory, İHD and TİHV, Turkey: Arbitrary arrest of women's rights defenders in Diyarbakır (March 30, 2022). Available at: https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-arbitrary-arrest-of-women-s-rights-defenders-in-diyarbakir.

240 Interview no. 9 with Gözde Engin from Rosa Women's Association, online, February 17, 2022.

241 Ibid.

242 Ibid.

V. Conclusions and Recommendations

A. Conclusions

This Report has argued that administrative harassment, as a means to suppress and silence HRDs and NGOs in Turkey, albeit less visibly than other forms of harassment, deserves attention due to its impact both on the affected NGO or HRD, and on the wider civil society through a chilling effect. The framework set up and (ab)used by the administration to harass HRDs and NGOs highlights that state of emergency powers continue to be exercised by the state long after the emergency rule, despite lacking legal basis and/or certainty. Authorities' arbitrary and often politically-motivated implementation of these bodies of laws unduly restricts the rights to freedoms of assembly and association, and freedom of expression, of NGOs and HRDs. Taking place against an increasingly dramatic decline in the rule of law in Turkey, NGOs and HRDs also usually lack effective remedies to challenge the administration's abuse of authority.

The harassment takes place in a context where civil society has seen its space progressively narrowed over the past few years through direct restrictions, targeting of its members, and an increasingly polarised and aggressive public discourse that has attempted to legitimise, if not directly encourage, the harassment itself, and other attacks by both state and non-state actors.

Smear campaigns targeting HRDs and NGOs for their lawful activities, perpetrated by both state officials and pro-government and right-wing media, stigmatise civil society in the eyes of the public and create the conditions for the administration to exert pressure against it using legal, administrative, and financial frameworks. The increasingly hostile discourse against HRDs, NGOs, and media that receive international funding imposes further difficulties on civil society in continuing its crucial work, given the already limited resources available, and exerts a chilling effect on others in seeking international funding, violating the right to seek and use resources, a fundamental component of the right to freedom of association. This climate has been worsened by the introduction of a bill on foreign funding that imposes registration, reporting, and public disclosure obligations for recipients under threat of imprisonment, and that if enacted, will seriously threaten media and potentially NGOs.

Administrative harassment is enabled by the complicated and scattered framework applicable to HRDs and NGOs, which also provides the administration with various powers, and exposes civil society actors to a range of hard-to-predict administrative, and often criminal, sanctions and consequences. The body of laws governing associations and foundations in Turkey, which includes various recordkeeping and reporting obligations, impacts legal certainty and creates a burdensome effect that is not conducive to an enabling civil society environment or to the defence of human rights. These requirements make it almost impossible for many NGOs to be fully compliant, considering a lack of capacity, resources, and technical expertise. Administrative audits, which are perceived as a serious threat by civil society, especially following the enactment of Law No. 7262, pave the way for the administration to pressurise NGOs via the threat of sanctions, including disproportionate administrative fines, and even dissolution cases. Law No. 7262's reference to the terrorism framework concerning the appointment of trustees to and the dissolution of associations, exerts a major chilling effect given that many HRDs, especially those in the Kurdish region, are already judicially harassed under the same framework, while fuelling further stigmatisation by conflating civil society work with terrorism.

In continuity with the state of emergency rule, individual HRDs exercising their right to freedom of assembly and association are targeted with often-exorbitant administrative fines, dismissal from public duty, denial of licenses to practice their profession, disciplinary action, and other sanctions under frameworks applicable to them. These sanctions may also lead

to the profiling of HRDs, and have serious psychological and financial impacts on both the individuals concerned and their families. This harassment also chills others' exercise of their rights to freedom of assembly and association, and deters them from engaging in civil society, particularly human rights work.

Administrative harassment is often used not as a stand-alone form of attack, but in close connection with judicial harassment. The administration can act upon a criminal court judgement or even a prosecution, investigation, or detention, while the judicial remedies available to challenge administrative acts and sanctions frequently fail to meet the international standards to be considered effective. The heavy financial pressure that is exerted via administrative harassment aims to intimidate HRDs, who already face financial challenges amidst insecure employment and a worsening economic crisis in Turkey.

Administrative harassment is usually ancillary to judicial harassment in the case of Kurdish HRDs, who face mass criminal trials under the terrorism framework, and thus do not perceive administrative harassment as such a grave threat in comparison. Still, this should not lead to its understatement: the closure of tens of NGOs in the region, under the emergency rule, remains a stark reminder of the devastation that administrative harassment can bring, in addition to judicial proceedings. This is especially so considering how easily terrorism charges can be brought in the Kurdish region following the criminalisation of particular organisations, and Law No. 7262 lays the basis for trusteeship and closure cases.

Civil society actors in Turkey expect to see increased pressure against HRDs and dissidents as parliamentary and presidential elections draw near (to be held, if the normal timing is followed, in June 2023). These concerns are further deepened by the recent convictions of HRDs in the Gezi Park trial. Considering opaque administrative processes categorising NGOs into risk groups subject to increased audits; recent closure cases against associations; exorbitant administrative fines; and other abusive practices by the administration, administrative harassment appears as though it will be increasingly used to intimidate HRDs, alongside other means of pressure, in the period leading up to the elections. HRDs belonging to already-marginalised groups, such as Kurds, women, LGBTI+ people, or refugees, are especially at risk, as are HRDs working on environmental rights and labour rights.

As observed in the previous reports in this series, and confirmed by respondents in this study, civil society in Turkey feels deserted by the international community, which appears to prioritise political or economic interests over the state of democracy, rule of law, and human rights in Turkey. The EU-Turkey Migration Deal is perceived by civil society in Turkey as the most pressing issue to be dealt with, as it not only leads to serious human rights violations against refugees, but also deters the EU and member states from raising human rights issues in their relations with Turkey.[243] The EU and member states still have the opportunity to influence the Turkish government and help reverse this trend by making cooperation, including in areas such as trade or customs, conditional upon the respect for human rights and the protection of HRDs. However, unless the Deal, along with other blackmailing weapons, are removed, the EU's and member states' leverage on human rights issues in Turkey will likely remain limited. The current geopolitical context following Russia's aggression against Ukraine, and given Turkey's role within NATO, risks further exacerbating the situation, and may leave Western powers increasingly reliant on the Turkish government to maintain stability in the region, which would make them even more vulnerable to its pressure.

Moreover, any HRD that receives international and especially EU funding is labelled an EU mouthpiece and a supporter of the EU-Turkey Deal, which fuels the stigmatisation as well as the chilling discourse surrounding foreign funding. In other words, due to international agreements such as the EU-Turkey Deal on migration, civil society in Turkey is targeted and deterred from using funds allocated by the EU within the scope of the Migration Deal, as well

243 Turkey remains an EU candidate country despite accession negotiations having been frozen for almost six years on account of the deteriorating situation and serious democratic backsliding in the country.

as other international funding, since the hostile discourse around the use of foreign funding does not differentiate between its sources. This is a serious issue for independent CSOs that are deprived of state funding and often denied authorisation to collect aid, since most of them are seriously under-resourced and often cannot access any funding other than EU grants.

The mere existence of the Migration Deal also impacts the targeted harassment faced by refugee rights defenders regardless of their stance on the Deal itself. Increasing xenophobia and racism fuelled by almost all opposition parties and right-wing politicians, who promise the "mass return" of refugees in clear violation of international law, have turned any objecting HRD into a target for threats and harassment. This points to how the international community's engagement with the Turkish government on a macro level directly affects the stigmatisation of HRDs and civil society in Turkey, and demonstrates that increased allocation of funds alone is not a solution. Funding provided by the EU to support the human rights work of civil society in Turkey, although much needed, is currently grounds for targeting NGOs and HRDs, and will continue to be so as long as the EU and member states pursue a migration and foreign policy that prioritises security and border control over respect for international human rights obligations.

Keeping these broader issues in mind, and based on the findings of this study and demands raised by participants, the below recommendations directed at the Government of Turkey and international actors including the UN, Council of Europe, EU, OSCE, international donors, and INGOs, aim to address administrative harassment against NGOs and HRDs, alongside other forms of harassment, as examined in the two previous volumes of this series, and its impact on both the individual or organisation in question, on broader civil society, and on the human rights situation in Turkey more broadly. These recommendations should be read in conjunction with, and partly reiterate, the recommendations put forward in the two previous reports,[244] which include several recommendations on guaranteeing the right to freedoms of assembly and association, creating an environment conducive to the defence of human rights, and fostering democracy and the rule of law.

B. Recommendations

a. To the Government of Turkey

- To ensure an enabling legal, institutional, and administrative environment for civil society and HRDs, which acknowledges the fundamental role they play in protecting democracy, the rule of law, and fundamental rights, and that ensures their protection;
- To refrain in all circumstances from publicly stigmatising, delegitimising, or discrediting civil society actors and HRDs; and to address any attempt, whether by public officials or non-state actors, to stigmatise civil society actors and HRDs, including those who are marginalised due to their gender, ethnicity, religion, sexual orientation, gender identity and other factors;
- To put an end to all acts of harassment, including at the administrative level, against all civil society actors and HRDs for the legitimate and peaceful exercise of their right to freedoms of assembly and association, to freedom of expression, and to defend human rights, and to ensure in all circumstances that they are able to carry out their civil society and human rights activities without hindrance or fear of being targeted through arbitrary administrative proceedings, audits, and sanctions;
- To refrain from abusing administrative audits and fines against associations and foundations and other measures, including those introduced under FATF recommendations; to put an end to the use of closure cases to harass NGOs; and to ensure that CSOs have access to effective remedies under Turkish law to challenge their abuse and receive reparations for the financial loss, reputational damage, and other consequences suffered due to the harassment they were victims of;

244 Supra, notes 4 & 7.

- To repeal all provisions in domestic legislation, particularly in the Anti-Terror Law, that allow for the criminalisation or sanctioning of dissent and participation in civil society activities, and lead to the judicial or administrative harassment of civil society actors and HRDs; to amend the Anti-Terror Law to ensure that terrorism-related offences are clearly defined in the legislation through provisions which do not leave room for misinterpretation and abuse, as recommended by, inter alia, the Commissioner for Human Rights of the Council of Europe and the United Nations' Special Procedures;
- To repeal all provisions in domestic law, in particular Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, and the Regulation Amending the Regulation on Associations of 2021, that allow the authorities to unreasonably and arbitrarily restrict civil society activities and freedom of association, including through restrictions over joining associations' executive boards, suspension of activities, appointment of trustees, increased audits based on criteria that lack legal basis, and exorbitant administrative fines; to repeal the provision introduced in the Law on Associations by the 2020 omnibus law that requires membership notification; and to amend provisions of the Law on Aid Collection that subject all fundraising activities to prior permits, to provide for less disruptive rules on aid collection that do not unduly restrict the right to seek, receive and use resources, which forms an essential part of the right to freedom of association;
- To reject the Bill on Certain Activities Funded by Foreign Sources; and to refrain from introducing any other legislative proposals on the receipt of foreign funding which would further stigmatise civil society organisations, HRDs, and media receiving financial support from abroad, and unduly restrict their work;
- To ensure access to funding for civil society organisations and HRDs, including public funding distributed following transparent and clear procedures, and funding by individual and private donors, both at the domestic and at the international level; to halt the stigmatisation and targeting of civil society organisations and media who receive foreign funding in compliance with the legal requirements in Turkey, and ensure that they can seek and receive funding from abroad without hindrance and/or fear of reprisals;
- To simplify recordkeeping and reporting obligations of associations and foundations, including by considering their cumulative effect on civil society organisations, and to make favourable arrangements such as the public benefit status available to rights-based NGOs without discrimination, by amending the Law on Associations, the Law on Foundations, the Law on Aid Collection, and the tax legislation, among other bodies of laws that apply to NGOs;
- To put an end to the abuse of bodies of laws to target individual HRDs, through exorbitant administrative fines imposed on peaceful protests, and retaliatory administrative acts restricting HRDs' right to work, including through dismissals from public duty, denial to practise one's profession, and disciplinary proceedings; to ensure at all times the respect for the right to peaceful assembly and association; to compensate HRDs for the financial loss and other damage caused by unlawful administrative proceedings and measures enacted against them; to immediately reinstate those who have been dismissed from public duty in their functions, restore HRDs' licence to practice their profession, and clear them from accusations brought against them following unlawful disciplinary proceedings;
- To repeal all provisions of emergency decrees integrated into ordinary law, and notably the measures shutting down civil society organisations, as well as the continued dismissals of public servants based on their alleged "connection or contact with terrorist organisations"; to reinstate those who were dismissed pursuant to these provisions in the positions they held prior to their dismissal;
- To ensure a country visit by the UN Special Rapporteur on the Right to Freedom of Assembly and Association, who holds a standing invitation from Turkey, and effectively cooperate with the Special Rapporteur to ensure a thorough investigation into the situation of civil society in Turkey, including the respect for the rights to freedom of assembly and of association and the impact of administrative harassment, particularly Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, on civil society organisations and HRDs;
- To issue a standing invitation to all relevant United Nations Special Procedures, including

the Special Rapporteur on the Situation of Human Rights Defenders, to effectively cooperate with their mandates to eliminate all restrictions, in law and in practice, hindering the work and restricting the rights of HRDs and civil society actors.

b. To International Actors

Recommendations to the UN:

To the UN Special Procedures, including the UN Special Rapporteurs on the situation of human rights defenders; on the rights to freedom of peaceful assembly and of association; on the promotion and protection of the right to freedom of opinion and expression; and on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

- To grant particular attention to independent sources, including civil society reports, on the situation of civil society and HRDs in Turkey, particularly the challenges faced by the latter in the exercise of the rights to freedom of association, assembly, and expression, as well as the right to defend human rights, including administrative harassment, by reacting to any deterioration or abuse that comes to their attention, through official statements and/or communications to the Government of Turkey regarding individual cases, as well as broader concerns regarding alleged violations or abuse, and to follow up on the recommendations contained therein;
- To follow up on the public communication on Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction; to inquire about information and data pertaining to the implementation of the Law; and to remind the Government of Turkey of its obligations to take measures to guarantee the free exercise of civil society activities in the context of its implementation, as outlined in the public communication;
- To remind the Government of Turkey that any bill or policy which aims at countering terrorism and drug trafficking, such as Law No. 7262, must abide by international human rights standards, especially those relating to the fundamental rights to freedom of association, assembly, and expression, and the right to defend human rights, and must not impinge on those rights.

To the UN Human Rights Committee:

- To monitor the respect for the rights to freedom of association, assembly, and expression, as well as the right to defend human rights in Turkey, and the impact that any restrictions or violations of these rights, including administrative harassment, are having on civil society and HRDs.

Recommendations to the Council of Europe:

To the Parliamentary Assembly:

- To keep the shrinking civic space in Turkey on its agenda and continue monitoring the situation, with a view to assessing the impact of existing laws, policies, and practices on the work of civil society and HRDs in Turkey, particularly on their freedom of association, assembly and expression, including by issuing new resolutions focusing on civic space, particularly on administrative harassment against civil society actors and HRDs, and including specific recommendations in this regard, and by following up on previous resolutions; and to issue a follow-up note on the situation of HRDs in Council of Europe member states including Turkey.[245]

245 Parliamentary Assembly Committee on Legal Affairs and Human Rights, Situation of human rights defenders in Council of Europe member states, AS/Jur (2022) 01 Rev (February 28, 2022). Available at: https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-01-EN.pdf.

To the Committee of Ministers:

- To keep the shrinking civic space in Turkey on its agenda and continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of association, assembly, and expression, including administrative harassment, on the functioning of civil society and HRDs in Turkey, and to issue resolutions focusing on administrative harassment against civil society actors and HRDs, in collaboration with other Council of Europe bodies and other international organisations;
- To keep monitoring the execution of relevant ECtHR judgments relating to cases of HRDs, including those regarding violations of the rights to freedom of association, assembly, and expression, or other fundamental rights, following administrative harassment and other forms of harassment.

To the Commissioner for Human Rights:

- To keep regularly monitoring the situation with regard to civil society, including freedom of assembly, association, and expression, with a focus on administrative harassment and the impact of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, and to issue public statements with specific recommendations in this regard, including in relation to specific cases where civil society and HRDs have been harassed through administrative or other forms of harassment;
- To follow up on her last country visit to Turkey in 2019 to document the situation in which civil society and HRDs operate, and the challenges that they face in relation to freedom of association, assembly, and expression, including administrative harassment, and on the recommendations included in the report issued following the visit.

To all Council of Europe bodies:

- To monitor and follow up with the Government of Turkey on its compliance with the assessments made by the Expert Council on NGO Law[246] regarding the compatibility of the amendments to the Law on Associations with European standards.

Recommendations to the European Union:

To the European Parliament, particularly to the Committee on Foreign Affairs, the Subcommittee on Human Rights and the Delegation to the EU-Turkey Joint Parliamentary Committee:

- To keep the shrinking civic space in Turkey on its agenda and to continue monitoring the situation, with a view to assessing the impact of existing laws, policies, and practices, including administrative harassment, on the work of civil society and HRDs; to adopt a resolution and issue public statements focusing specifically on the issue of administrative harassment against civil society actors and HRDs, particularly in the context of the application of Law No. 7262, citing individual cases and including specific recommendations to the authorities in Turkey in this regard; to address the issue of civic space, particularly administrative harassment against CSOs and HRDs, in the context of its annual report on the situation of human rights in Turkey; to hold a public debate in the European Parliament on the situation of CSOs and HRDs in Turkey, focusing in particular on administrative harassment as a way to curb civil society and restrict its work.

To the European Commission and the European External Action Service:

- To regularly monitor respect for the rights to freedom of association, assembly, and expression, including administrative harassment and its impact on civil society and HRDs in Turkey, as part of their monitoring of the progress made by Turkey towards meeting the criteria required of candidate countries to accede to the EU, notably in the area of the rule of law and

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fundamental rights, and to address these issues in the upcoming country report due later in 2022, together with recommendations to the Government of Turkey in this regard;

- To raise concerns regarding the shrinking civic space in Turkey, including the restrictions on freedom of association, assembly, and expression, with a specific focus on administrative harassment and the stigmatisation of CSOs receiving international funding (including the bill on foreign funding), both publicly and in their diplomatic relations with the Government of Turkey, and both bilaterally and in multilateral fora, including in the context of High Level Political Dialogues, and based on information provided by civil society actors;
- To support civil society in Turkey and stand alongside targeted HRDs and CSOs, including by ensuring that resources are available to civil society organisations and HRDs active on democracy, the rule of law, and human rights, including core funding and flexible, unrestricted funding, to ensure the long-term sustainability of civil society work in the context of a rapidly deteriorating external environment and a closing civic space; to provide funding spendable towards, among others, administrative fines, to support civil society's resilience in the face of increased administrative harassment; to provide emergency funding for individual HRDs at particular risk; to ensure other rapid response measures and protection mechanisms for civil society organisations and HRDs at risk, including in cases where these have been harassed through administrative measures and financial audits; and to urgently implement all appropriate measures at all levels to develop and promote an enabling framework for human rights defenders to access visas for the EU;
- To address the stigmatisation of CSOs that seek, receive, and use international funding; to ensure that funding received by CSOs does not further expose them to harassment by the authorities; and to offer specific protection to HRDs and CSOs who are harassed due to funding they receive from the EU;
- To publicly reaffirm the importance of supporting civil society and HRDs, including financially, and including in the context of counter-terrorism; to publicly express concern regarding the ongoing global trend of abuse by states of counter-terrorism legislation and policies to target and harass civil society and HRDs; and to promote the improvement of the FATF framework to introduce safeguards to protect freedom of expression and freedom of association;
- To assess the impact that the EU-Turkey Migration Deal is having on HRDs and CSOs in Turkey; and to revoke the EU-Turkey Migration Deal, given its direct impact on refugees as well as its indirect impact on HRDs and CSOs in Turkey, including through the de-prioritisation of human rights issues in EU-Turkey relations, the stigmatisation and the chilling discourse surrounding foreign funding, and the targeted harassment of refugee rights defenders.

To the EU Delegation in Ankara:

- To ensure full implementation of the EU local strategy to support and defend HRDs in Turkey, including through close monitoring of the cases of HRDs and NGOs targeted by the Government of Turkey, regular attendance to their trials, and regular communication on their cases with the authorities, at all levels.

To EU Member States:

- To enhance scrutiny by the EU on the issue of shrinking civic space in Turkey, in particular on the impact that the emergency measures, Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, and other recent legislation have had on the rights to freedom of association, assembly, and expression of civil society and HRDs by calling for the matter to be addressed at relevant discussions on the matter, and on EU-Turkey relations more broadly, within the Council; to publicly and collectively condemn the shrinking civic space in Turkey, both collectively as EU members and bilaterally in their diplomatic relations with Turkey;
- To revoke the agreement between the EU and Turkey on migration, that the Council negotiated on the Union's behalf, which is not in line with the EU and member states' international obligations with regards to the human rights of people on the move, on

account of the impact that this is having both on the rights of migrants, asylum-seekers and refugees, and on civil society organisations and HRDs in Turkey; to ensure that any future agreement concluded with Turkey, including on migration, includes human rights safeguards and is in line with European and international human rights standards, including civil society actors' right to freedom of assembly, association and expression and the right to defend human rights, and refugee rights standards; to revoke the qualification of Turkey as a "safe country of return" for migrants, asylum seekers, and refugees, in view of the critical human rights situation in the country, which does not have a functioning asylum system in place and does not guarantee sufficient standards for human rights protection; to address the impact that the agreement has on CSOs and HRDs in Turkey, including by adopting strategies to mitigate it and further supporting civil society actors working on these issues, both financially and through other adequate protection measures, including by countering the stigmatising narrative affecting them.

Recommendations to the OSCE:

To the OSCE Parliamentary Assembly:

- To keep the shrinking civic space in Turkey on its agenda and to continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of association, assembly, and expression, including administrative harassment, in Turkey on the work of civil society and HRDs, and to issue statement and/or resolutions focusing specifically on administrative harassment against civil society actors and HRDs, and including specific recommendations to the Government of Turkey in this regard.

To the OSCE Office for Democratic Institutions and Human Rights ("ODIHR"):

- To monitor the implementation of the OSCE ODIHR Joint Guidelines on Freedom of Association[247] by Turkey, and to adopt a report on their respect by this State Party with specific recommendations to the Government of Turkey in this regard to address any instances of non-compliance. This should include a focus on administrative harassment against NGOs, particularly following the enactment of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction and the amendments to the Law on Associations and Regulation on Associations;
- To request the Expert Panel on Freedom of Assembly and Association to monitor compliance by Turkey, both in law and in practice, with the guidelines, and to issue recommendations to the Government of Turkey in that regard;
- To publicly and promptly react to attacks against HRDs and violations of their rights in Turkey, including in the context of administrative harassment against them;
- To monitor the upcoming parliamentary and presidential elections in Turkey (to be held, if the normal timing is followed, in June 2023) through the deployment of a full election observation mission, with a specific focus on the use of administrative harassment as a means to target dissidents and the opposition in the lead-up to the elections and to restrict the right of opposition parties to campaign for elections.

c. To International Donors

- To develop and/or consolidate their network and support to civil society actors and HRDs in Turkey, including those who are targeted through administrative harassment, and with a particular attention to those more marginalised because they are more isolated, less connected to the international community, and receive less support; and to establish more efficient channels of communication and consultation with civil society actors in Turkey to directly and regularly assess their needs and adapt their support to them;
- To organise capacity-building activities which respond to the needs and interests of civil

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society actors and HRDs, including through the provision of tailored administrative, financial, legal and psychological support to HRDs and NGOs at risk of or targeted through administrative harassment;

- To ensure that grants and other types of support provided to civil society and HRDs in Turkey, including emergency grants, relocation and rest & respite programmes, are accessible to different segments of civil society, including those who are most at risk and/or who encounter barriers in accessing such resources due to their date of establishment (for NGOs), limited international connection, language skills, professional human resources, and other reasons; and to integrate well-being as a core component of any support program directed at HRDs and civil society actors in Turkey;
- To ensure that the requirements provided under the grants and other types of support programmes match the reality on the ground and take into due consideration the limitations and constraints, including in terms of human resources, faced by NGOs in the context of a closing civic space, and do not impose unnecessary administrative or financial burdens on civil society actors and HRDs; to show flexibility and otherwise assist or support grantees in complying with their funding obligations under challenging circumstances; to introduce unrestricted funds via simplified procedures, up to certain amounts, to allow civil society actors to respond to fast-paced needs; to provide core funding alongside project funding to ensure the long-term sustainability of civil society work and support HRDs and CSOs in coping with the challenges deriving from a shrinking civic space, including administrative harassment, which requires continuous financial and human resources to tackle;
- To engage in dialogue with the authorities in Turkey with a view to contributing to ending the stigmatisation and other forms of harassment, including administrative harassment, of civil society organisations for receiving foreign funding and other types of resources or support from external partners;
- Explore alternative methods, with the participation of HRDs and CSOs working in Turkey, to fund civil society in Turkey that would circumvent the obstacles that derive from a restrictive environment and the stigmatisation of CSOs and HRDs receiving international funding.

The Human Rights Association (IHD, İnsan Hakları Derneği) was founded on July 17, 1986, by 98 people, including lawyers, journalists, intellectuals, but mainly relatives of political prisoners. The sole objective of IHD is to carry out activities in defense of human rights and freedoms.

In 1992, the statute was changed to cover humanitarian aspects as laid out in the Geneva Conventions. Since then, IHD has also criticized human rights violations of armed groups. IHD, together with its headquarters, 27 branches and 7 representations, is Turkey's biggest non-governmental human rights organisation and has been a member of FIDH since 1996, EuroMed Rights since 1997 and OMCT's SOS-Torture Network since 2019. IHD is also a founding member of Human Rights Joint Platform (IHOP) which was established in 2005.

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Establishing the facts
Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility.
Experts sent to the field give their time to FIDH on a voluntary basis.
FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society
Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community
Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.
FIDH also takes part in the development of international legal instruments.

Informing and reporting
Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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OMCT Europe is an affiliate organisation of the World Organisation Against Torture (OMCT) supporting its goals and objectives in Europe, Turkey and Central Asia as well as before the European institutions. The OMCT works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up to torture. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims. OMCT's international secretariat is based in Geneva, with offices in Brussels and Tunis.

Assisting and supporting victims
OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity
Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders
Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field
OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture.

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a joint programme
OMCT SOS-Torture Network
fidh
The Observatory
for the Protection
of Human Rights Defenders

Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- International missions of investigation and solidarity;
- A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments."

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org
FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80
OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

fidh

OMCT SOS-Torture Network