

# TURKEY PART II

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## Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association

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May 2021



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Cover photo: Women protesters clash with Turkish policemen during a demonstration against Turkey's withdrawal from Istanbul Convention, an international accord designed to protect women, in Istanbul, on March 20, 2021. Thousands protested in Turkey on March 20, 2021, calling for President Recep Tayyip Erdogan to reverse his decision to withdraw from the world's first binding treaty to prevent and combat violence against women. © BULENT KILIC / AFP

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# I - INTRODUCTION

## A. About This Report

Nearly three years have passed since the end of the two-year-long emergency rule in Turkey, yet fundamental rights and the rule of law remain under siege. The crackdown on civil society continues unabated, and the international community is inundated with regular reports of human rights defenders ("HRDs") and other civil society actors being stigmatised, judicially harassed, and detained.

### What 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 Human Rights Defenders, 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."

Restrictions on fundamental rights exacerbated by the emergency rule pose serious risks to the proper functioning of civil society – which in turn is a precondition for a strong and healthy democracy – and numerous rights, including the rights to freedom of assembly, freedom of association, and freedom of expression, remain under threat.

This report ("Report"), the second of two on civic space<sup>1</sup> published over the past year 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")), aims to document the situation of civil society and HRDs and to expose the restrictions and challenges affecting the work of civil society and HRDs in Turkey in the aftermath of the attempted coup in July 2016. Its objective is to give a snapshot of the situation in which civil society organisations and HRDs currently operate, rather than to provide an exhaustive list of violations that have occurred in a given period of time. While documenting major trends and restrictions on the right to freedom of association, the Report aims to draw conclusions and put forward recommendations for decision-makers at both the national and the international levels, including international organisations, human rights protection mechanisms, and international donors, on how to effectively respond to a progressively narrowing civic space in Turkey, and how to better support civil society and HRDs in this context.

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<sup>1</sup> 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, The Observatory & IHD, 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>.

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## **B. Methodology**

This Report is based on research conducted by FIDH, in the framework of the Observatory, notably 18 interviews with 16 civil society representatives based in Turkey, including representatives of human rights organisations, trade unions, and other professional associations, of which 13 were conducted in May 2020, an additional three in November 2020 and January 2021, and two in March 2021 as follow-ups to previous interviews conducted in May 2019. Another interview was conducted with an international actor operating in Turkey in June 2020. Within the scope of this research, an interview was also conducted with the Ombudsman Institution of Turkey in May 2020. Additionally, the inquiries made to the Ministry of Justice, including its Presidency of Human Rights, and to the Directorate of Civil Society Relations of the Ministry of Interior in May 2020 and January 2021, were left unanswered. The interviews, which were initially meant to take place via in-person meetings in Turkey, were instead conducted remotely, due to travel restrictions and sanitary risks related to the Covid-19 pandemic at the time scheduled for the investigation. Local interviewees were selected, in consultation with FIDH and OMCT's member organisations, in such a way as to ensure geographical balance as well as diversity in the human rights issues they were working on. The interviewees included organisations and non-official groups working on a wide range of issues, including women's rights, LGBTI+ rights, environmental rights, labour rights, the rights violations occurring in the South-East of Turkey, and rights violations by the security forces. In addition, the Observatory sought to strike a balance between the large-scale organisations monitoring human rights violations in Turkey, and the grassroots organisations and movements that have been affected first-hand by the crackdown. During the interviews, the Observatory also strove to capture the latest adverse impacts of the Covid-19 pandemic and related measures on the activities of civil society organisations and HRDs.

The research was built also on regular monitoring and documentation activities carried out by the Observatory; the Türkiye İnsan Hakları Vakfı ("TIHV," Human Rights Foundation of Turkey), a member organisation of both FIDH and OMCT; and İnsan Hakları Derneği ("IHD," Human Rights Association), a member organisation of FIDH and OMCT's SOS-Torture Network, regarding respect for human rights in Turkey, including the risks and challenges faced by civil society and HRDs in the country.

It 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.

The Observatory wishes to thank IHD and TIHV for their valuable cooperation and support during these research activities, as well as all the individuals, institutions, and organisations who agreed to share their views and analyses with us.

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## II - CONTEXT

The environment in which civil society operates in Turkey has been progressively deteriorating since 2013. Although different segments of civil society suffered from governmental repression long before 2013, the crackdown gradually intensified following the protests known as the "Gezi Park protests" in 2013<sup>2</sup> and the collapse of the peace process between the Government and the PKK (Kurdistan Labour Party<sup>3</sup>) in 2015,<sup>4</sup> reaching an alarming level after the attempted coup on July 15, 2016.<sup>5</sup> Following the coup attempt, and in order to quell the uprising, the authorities in Turkey enacted a state of emergency, which was renewed seven times before finally ending on July 18, 2018, and which resulted in severe restrictions to human rights and fundamental freedoms, along with a narrowed space for civil society.

The end of the emergency rule did not fundamentally alter the situation. The erosion of the rights of civil society actors, which is symptomatic of a wider degradation of the rule of law and of democratic checks and balances, including judicial independence, in Turkey, continues. Freedom of association, along with freedom of assembly and freedom of speech, has been the target of retrogressive laws and policies, in complete disregard of Turkey's constitutional obligations and international engagements, and the environment in which civil society operates remains far from hospitable.

The freedom of speech of opposition politicians, journalists, HRDs, and all those who criticise the Government's policies is under constant attack, and dissenting voices continuously face reprisals, including judicial harassment on various grounds, for their exercise of this right. In parallel to the degradation of free speech, freedom of association has also been severely restricted, independent civil society actors have been consistently stigmatised and marginalised, and their work has been hindered through an unprecedented wave of criminalisation. The Observatory's first report, published in July 2020, focusing on the freedom of assembly, depicts an environment in which the fundamental right to express dissent through peaceful protest has been rendered ineffective through an increasingly restrictive regulatory framework and abusive practices by the authorities. Widespread bans on assemblies prevent right-holders from raising their voices through public gatherings, while those who take to the streets despite the bans face police violence, judicial harassment, and stigmatisation. This relentless crackdown on civil society actors and their fundamental right to free expression, assembly, and association, seriously curbs civil society work and unreasonably restricts HRDs' ability to continue their work in defence of human rights and democratic values.

For a more comprehensive analysis of the context of the aftermath of the attempted coup in July 2016 in Turkey, please see Part I of this Report, entitled "A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society."<sup>6</sup>

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2 The Gezi Park protests began on May 28, 2013 to protect Gezi Park against the construction of a replica of 19th-century Ottoman barracks, that was to contain a shopping mall, a cultural centre, and a mosque. They then sparked a wave of anti-Government demonstrations across Turkey demanding basic rights and freedoms, in reaction to the police violence against the peaceful protestors. Please see, FIDH, Gezi, One Year on: Hunting the Protestors Down (May 27, 2014). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/15401-gezi-one-year-on-hunting-the-protestors-down>; also see, Amnesty International, Turkey: Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey (October 2, 2013). Available at: <https://www.amnesty.org/en/documents/EUR44/022/2013/en>.

3 The PKK is an armed group listed as a terrorist organisation by Turkey, the EU, and NATO.

4 See, BBC, PKK to 'resume fighting' against Turkish army (November 5, 2015). Available at: <https://www.bbc.com/news/world-europe-34732235>; also see, FIDH & Euromed Rights, High-Level Solidarity Mission to Turkey 20-24 January 2016 – Human Rights Under Curfew (February 24, 2016). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-human-rights-under-threat>.

5 See, FIDH, FIDH condemns coup attempt in Turkey and calls for response which respects the rule of law and human rights (July 19, 2016). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/fidh-condemns-coup-attempt-in-turkey-and-calls-for-response-which>; also see, Human Rights Association & Human Rights Foundation of Turkey, Joint Statement by FIDH Member Organisations (July 16, 2016). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/joint-statement-by-fidh-member-organisations-ihd-and-hrft-on-the-coup>.

6 The Observatory & IHD, 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>.

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### III - RESTRICTIONS ON CIVIC SPACE

#### A. General

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*"The circumstances that we are facing are threatening the core mission of civil society."*<sup>7</sup>

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The state of emergency had a devastating impact on the civic space in Turkey, and more specifically on the freedom of association. During the emergency rule, at least 1,410 associations,<sup>8</sup> 109 foundations,<sup>9</sup> 19 trade unions, and 149 media entities<sup>10</sup> (including news outlets, newspapers, TV and radio channels, periodicals and publishers) were shut down by emergency decrees without a court decision.<sup>11</sup> Not only did these measures stifle civil society, but the climate of fear created by the closure of many civil society organisations and the harassment of their members and other HRDs had a chilling effect on the others. Many started to live in constant anxiety of being closed down and of their members being investigated or prosecuted, and had to adjust their activities to the shifting and restrictive conditions and potential security risks. This has consumed significant time, energy, and resources, and diverted them from their important human rights work. Many have prioritised activities that would give them less exposure and visibility, as a self-protective measure or as a direct result of the more propitious conditions for such activities. Simultaneously, prominent civil society organisations and their representatives were subjected to administrative and criminal investigations, prosecuted, and, in many instances, convicted and imprisoned on spurious charges.

The situation has not improved following the end of the emergency rule. More than two and a half years since the state of emergency ended in July 2018, civil society remains under siege in Turkey. Civil society actors and HRDs are still being stigmatised, judicially harassed, and arbitrarily detained. An overwhelming number of high-profile civil society actors have been, or are still subject to criminal investigations and/or prosecutions that have been launched against them. Furthermore, a controversial bill came into force in December 2020 under the name of "Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction." Whereas the purported objective of Law no. 7262 was to implement the relevant international standards, the Law introduced amendments to seven laws, allowing the authorities to unreasonably restrict civil society activities, and thus manifestly exceeded its purported objective. (See Box #1, below.)

Amid the daily challenges posed by an increasingly hostile environment and institutional limitations on access to funding and other resources, on the one hand, and growing human rights abuses in the country on the other, many civil society organisations and HRDs struggle to survive and, indeed, live on the edge of severe burn-out. Additionally, the authorities' indifference towards the human rights work of civil society and their failure to meaningfully engage with it, undermine civil society's fundamental role in a democratic society, threaten its core mission, and prevent it from meaningfully participating in decision-making. While a considerable number of prominent civil society actors and HRDs continue their work in extremely dire conditions, and with even more determination than before, some are fatigued and worn out by the important challenges they face, and the obstacles to achieving a tangible impact on human rights in the country.

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7 Online Interview no. 3 in May 2020 with a civil society representative.

8 188 out of 1,598 initial closures relating to associations were later overturned by emergency decrees.

9 20 out of 129 initial closures relating to foundations were later overturned by emergency decrees.

10 21 out of 170 initial closures relating to foundations were later overturned by emergency decrees.

11 State of Emergency Inquiry Commission, Activity Report 2019, p. 9 (January 31, 2020). Available at: [https://soe.tccb.gov.tr/Docs/OHAL\\_Report\\_2020.pdf](https://soe.tccb.gov.tr/Docs/OHAL_Report_2020.pdf).

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## B. International Standards and Domestic Legal Framework

### a. International Law

Freedom of association is a fundamental right, which is essential to the functioning of a pluralistic and vibrant democracy, as well as to the effective exercise of other fundamental rights. Indeed, the participation of citizens in the democratic process is largely facilitated through associations, by means of which they pursue common objectives.<sup>12</sup> The essential contribution made by non-governmental organisations (“NGOs”) to the realisation and the preservation of democracy is internationally recognised, in particular by raising public awareness about human rights and their abuse, ensuring transparency and accountability for public action, and enabling democratic debate and a vibrant social and cultural life.<sup>13</sup>

Turkey is a party to the European Convention on Human Rights (“ECHR”) and the International Covenant on Civil and Political Rights (“ICCPR”), both of which recognise the right to freedom of association, respectively under Article 11 and Article 22.<sup>14</sup> In addition to freedom of association, the right to defend human rights is widely accepted as a fundamental right on its own, and is indirectly enshrined in the international human rights treaties including ICCPR and ECHR. The United Nations Declaration on HRDs<sup>15</sup> incorporates and gives official recognition to this right, by articulating existing rights enshrined in binding international human rights treaties, in a way that makes them directly applicable to HRDs and their work. This includes the rights to conduct human rights work individually and in association with others (Article 1); to seek, obtain, and receive information relating to human rights (Article 6); to have effective access to participation in the conduct of public affairs (Article 8); and to solicit and receive funding and resources (Article 13).<sup>16</sup> The UN Declaration also holds State parties responsible for “taking all necessary measures to ensure the protection” of HRDs who face violence, threats, retaliation, (...) as a consequence” of their work (Article 12).

Freedom of association safeguards associations against unjustified State practices such as refusal of registration, dissolution of an association, and interference with their activities.<sup>17</sup> Restrictions to freedom of association are solely justified if they are “prescribed by the law and necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”<sup>18</sup> According to the European Court of Human Rights’ (“ECtHR”) established jurisprudence, for a measure to be deemed necessary, two conditions must be fulfilled: a) any interference must correspond to a pressing social need, and b) the interference must be proportionate to the legitimate aim pursued.<sup>19</sup>

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12 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 22, para. 107 (August 31, 2020); *Moscow Branch of the Salvation Army v. Russia*, § 61. Available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_11\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf).

13 Council of Europe Venice Commission & Organisation for Security and Cooperation in Europe’s (“OSCE”) Office for Democratic Institutions and Human Rights, Joint Guidelines on Freedom of Association, p. 16, para. 13 (January 1, 2015). Available at: <https://www.osce.org/files/f/documents/3/b/132371.pdf>.

14 Turkey has also ratified all fundamental International Labour Organisation (“ILO”) conventions that ensure the right to organise and form workers’ and employees’ organisations, including Freedom of Association and Protection of the Right to Organise Convention no. 87 and Right to Organise and Collective Bargaining Convention no. 98. These conventions lay out fundamental principles for workers such as the right to form and join organisations of their own choosing without prior authorisation, protection against anti-union discrimination, and free participation in union activities. See, ILO, International Labour Standards on Freedom of Association. Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang-en/index.htm>.

15 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

16 For a more detailed analysis of the right of NGOs to funding and its violations please see, the Observatory, Annual Report 2013: Violations of the right of NGOs to funding – from harassment to criminalisation (February 28, 2013). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/archives-human-rights-defenders/annual-reports/obs-annual-report-2013-violations-of-the-right-of-ngos-to-funding>.

17 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 26, para. 139 (August 31, 2020).

18 Article 11 of the ECHR and Article 22 of the ICCPR.

19 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 27, para. 147 (August 31, 2020).



Furthermore, States should not only refrain from imposing unreasonable restrictions on the right to freedom of association, but are also under the positive obligation of taking reasonable and appropriate measures to secure the effective enjoyment of the right to freedom of association.<sup>20</sup> This positive obligation is of particular importance for those holding unpopular views or belonging to minorities, who are more vulnerable to harassment and attacks. Public authorities are required to guarantee the proper functioning of an association, even when they annoy or give offence to persons opposed to their lawful ideas.<sup>21</sup> It further includes the State's obligation to promptly and thoroughly address any attempt by others to restrict or violate this right, or to attack or harass those who exercise it.

## b. Domestic Legal Framework

Freedom of association is recognised under Article 33 of the Constitution of Turkey, entitled "freedom to form associations." Accordingly, everyone is free to form associations<sup>22</sup> or become a member of one, without prior permission. Limitations to the freedom of association shall be prescribed by law and only permitted in the interests of national security, public order, the prevention of crime, the protection of public health or morals, or the protection of the rights and freedoms of others, in line with international standards. The same article also provides that associations can only be shut down by a judicial decision.

Neither the right to public participation nor the right to defend human rights is expressly recognised in the Constitution. It is widely accepted in international law, however, that these rights, particularly the right to participate in democratic decision-making, are crucial to a functioning pluralist democracy. Thus, they are indirectly embedded in the Constitution through other constitutionally protected fundamental rights and principles, which should be interpreted in line with international standards, including the articles protecting freedom of expression, media freedom, freedom of assembly and association, as well as the right to information. Furthermore, in accordance with Article 90 of the Constitution of Turkey, international treaties on fundamental rights that are duly ratified by Turkey must prevail if a conflict occurs between the law and the treaty provisions. Thus, the Constitution of Turkey upholds those international standards and places them above domestic law.

The Civil Code,<sup>23</sup> along with the Law on Associations<sup>24</sup> and the Law on Foundations,<sup>25</sup> are the main pieces of legislation governing the structure and management of associations and foundations in Turkey.<sup>26</sup> In addition to those, there are numerous other laws and regulations that include civil, fiscal, administrative as well as criminal provisions, and which directly or indirectly concern freedom of association and civil society activities more broadly. While the legislation is generally in line with the international standards on freedom of association, the legal framework appears to be rather complex, and to burden civil society organisations with excessive bureaucratic requirements.<sup>27</sup> It is particularly challenging for the smaller sized and

20 Ibid, p. 36, para. 213.

21 Ibid, p. 36, para. 215.

22 The term association is used in a strict sense, which only includes formal associations with legal personality. The same article also applies explicitly to foundations. Therefore, the text of the Constitution only refers to two formal types of NGOs recognised under Turkey's legal system, namely associations and foundations.

23 Civil Code no. 4721 (*Medeni Kanun*) published in the Official Gazette no. 24607, dated December 8, 2001, and entered into force on January 1, 2002.

24 Law no. 5253 on Associations (*Dernekler Kanunu*) published in the Official Gazette no. 25649, dated November 23, 2004, and entered into force through its publication.

25 Law no. 5737 on Foundations (*Vakıflar Kanunu*) published in the Official Gazette no. 26800, dated February 27, 2008, and entered into force through its publication.

26 Special types of associations, such as trade unions and political parties, are subjected to other special legislation. Please see, Law no. 2820 on Political Parties (*Siyasi Partiler Kanunu*) published in the Official Gazette no. 18027, dated April 24, 1983, and entered into force through its publication; and Law no. 6356 on Trade Unions and Collective Agreements (*Sendikalar ve Toplu İş Sözleşmesi Kanunu*) published in the Official Gazette no. 28460, dated November 7, 2012, and entered into force through its publication.

27 For a detailed analysis of the legislation see, STGM & TÜSEV & YADA, *Sivil Toplum Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler* (May 2015). Available at: <https://www.tusev.org.tr/usrfiles/images/MevzuatRapor.15.09.15.pdf>; also see, International Center for Not-For-Profit Law, Turkey (last update on October 20, 2020). Available at: <https://www.icnl.org/resources/civic-freedom-monitor/turkey>.

newly-established organisations to comply with all the administrative requirements, without receiving any expert support.

Although this research does not purport to assess in detail all the provisions found in Turkish legislation that are applicable to civil society, the below sections will attempt to assess the most controversial provisions, which are bound to have an impact on civil society's work. However, it is worth mentioning that, more than the legislative framework, what is most problematic in terms of civic space are rather the arbitrary or abusive application of the legislation and the deliberate targeting of civil society actors and HRDs, including but not limited to judicial harassment.

### **Box #1 – The Recent Legislative Amendments Threatening Independent Civil Society**

A controversial bill came into force on December 31, 2020 under the name of "Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction,"<sup>28</sup> which has a serious potential to further restrict freedom of association and to curb civil society activities in Turkey. The purported objective<sup>29</sup> of Law no. 7262 is to implement a number of UN Security Council resolutions<sup>30</sup> as well as the recommendations of the Financial Action Task Force,<sup>31</sup> but the majority of the articles either do not appear to have any direct connection to this objective, or in fact provide for measures manifestly exceeding this aim. Furthermore, it was elaborated without any meaningful consultation or contribution from stakeholders, particularly from civil society, despite civil society being directly concerned by these amendments.

Law no. 7262 introduces amendments to seven laws, including the "Law on Associations" and the "Law on Aid Collection,"<sup>32</sup> and grants broad powers to the authorities.<sup>33</sup> Most significantly, the newly-adopted Article 30/A of the Law on Associations allows the Minister of the Interior to suspend staff members and/or executives of civil society organisations who are being prosecuted on terrorism-related charges, as a temporary measure, and to have a representative appointed by the court in lieu of the suspended person. If this measure is deemed "insufficient," and the authorities believe that there is an imminent risk pending the outcome of the proceeding ("*gecikmesinde sakınca bulunması durumunda*"), the Minister is also entitled to temporarily suspend the activities of the relevant organisation, a decision which should be approved by a court within 48 hours. Indeed, the conditions set for the Ministry to seek the suspension of an association's activities are vague enough to open the door to abusive implementation of the provision.

28 Law no. 7262 (*Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun*) published in the Official Gazette no. 31351 (5<sup>th</sup> edition), dated December 31, 2020, and entered into force through its publication.

29 See, the Bill on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction and its objective (December 16, 2020). Available at: <https://www2.tbmm.gov.tr/d27/2/2-3261.pdf>.

30 Security Council Resolutions 1267 (1999), 1988 (2011), 1989 (2011), 2253 (2015), and 1373 (2001).

31 Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: Turkey – Mutual Evaluation Report (December 2019). Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>.

32 Law no. 2860 on Aid Collection (*Yardım Toplama Kanunu*) published in the Official Gazette no. 18088, dated June 25, 1983 and entered into force through its publication.

33 For a detailed analysis of the bill, see, 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-finansmaninin-onlenmesine-iliskin-kanun-teklifine-dair-degerlendirme>; also see, the Observatory, Statement – 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-association-and-must-be>.

Law no. 7262 includes several other provisions that allow the authorities to unreasonably restrict or hamper the activities of civil society organisations, including introducing yearly audits of civil society organisations and their partners (Article 19 of the Law on Associations, as amended), as well as a ban on individuals convicted of financing terrorism or drug trafficking from taking part in the leadership of an association (Article 3 of the Law on Associations, as amended). In a context where terrorism-related offences are by far the main indictments with which civil society actors and HRDs are charged, and often convicted – a practice that has been severely condemned by international governmental and non-governmental actors due to the manifest abuse by the authorities of anti-terror legislation to crack down on dissenters – this ban is likely to prevent numerous prominent civil society actors and HRDs from taking, or maintaining, executive positions in associations. Law no. 7262 also introduces amendments that significantly increase the administrative fines that apply to organisations which collect donations through online platforms without getting prior approval by the authorities (Article 29 of the Law on Aid Collection, as amended). This provision deals a final blow to the already restrictive provisions on fundraising (for further information see Section III, E “Structural Challenges: Access to Funding and Resources”), thus further limiting civil society organisations’ access to funding to support their work.

## C. Attacks Against Civil Society and the Hostile Environment

### a. Stigmatisation and Discrediting of Civil Society Actors

HRDs and civil society actors have long been portrayed in Turkey as pursuing foreign interests, posing a threat to national security, and/or promoting the objectives of “terrorist organisations,” by Government officials and on pro-Government media. This narrative gained ground following the 2015 collapse of the peace process between the Government and the PKK, especially against Kurdish HRDs and all those who bring attention to the rights violations in the South-East, and reached an alarming level in the aftermath of the attempted coup in 2016. Since then, anyone expressing criticism towards the Government has been portrayed as a potential “internal enemy” striving to overthrow the Government of Turkey.

Smear campaigns by State officials<sup>34</sup> and on pro-Government media against civil society actors and HRDs have taken various forms, such as pointing to their relationship with international actors and donors, which is referred to as a proof of their alleged ties to foreign powers; suggesting connections with terrorist organisations and other “enemies of the State”; and feeding conspiracy theories with inaccurate and false information. These campaigns often call on the authorities to

<sup>34</sup> For instance, Şebnem Korur Fincancı, a forensic physician and the former chair of TIHV, was directly targeted by the President after she was elected as chair of the Turkish Medical Association (*Türk Tabipler Birliği – TTB*). In a speech at an AKP meeting in October 2020, the President condemned TTB for electing “someone from the terrorist organisation” as their chair. See, Bianet, Erdoğan calls Turkish Medical Association Chair ‘a terrorist’, hints at new law (October 14, 2020). Available at: <https://bianet.org/english/politics/232726-erdogan-calls-turkish-medical-association-chair-a-terrorist-hints-at-new-law>. For TIHV’s press release in response to the President’s accusations, see, TIHV, Press Release on Our President Professor R. Şebnem Korur Fincancı (October 15, 2020). Available at: <https://tihv.org.tr/basin-aciklamalari/press-release-on-our-president-professor-r-sebnem-korur-fincanci>.

Another example is the case of Osman Kavala, a businessperson and prominent HRD, who has been in arbitrary detention since October 2017. He has been targeted by the President and falsely accused of being “the financier of the Gezi Park protests in 2013,” “the Soros of Turkey,” and “a terrorist” on multiple occasions since the start of his arbitrary detention. The same narrative has also been promoted on the pro-Government media. For example see, Bianet, Erdoğan Calls Osman Kavala ‘Domestic Soros’ (October 24, 2017). Available at: <https://bianet.org/english/politics/190908-erdogan-calls-osman-kavala-domestic-soros>. For more information on his case see, Keep the Volume Up for Rights Defenders in Turkey, Osman Kavala (last update on December 29, 2020). Available at: <https://www.sessizkalma.org/en/defender/osman-kavala-2/>.

take action against this allegedly incriminating behaviour and its “perpetrators.” In many cases, smear campaigns on pro-Government media go hand-in-hand with a delegitimising narrative by high-level Government officials, both aimed at discrediting civil society actors, as well as their legitimate human rights work, in the eyes of the general public.

Smear campaigns have substantial negative impacts on civil society actors and HRDs. Indeed, they contribute to fuelling mistrust towards them in society and exacerbate the misconception that civil society actors and HRDs are a threat to public security, rather than agents of positive change.<sup>35</sup> Also, these campaigns are very often followed by harassment of civil society actors and HRDs,<sup>36</sup> both by public authorities and non-State actors, including judicial harassment, physical attacks, and even, in the most extreme cases, killings.<sup>37</sup> Therefore, smear campaigns against civil society actors should be seen as an actual threat, and, indeed in many cases, as a first step leading to their delegitimation and harassment, and even in some instances to their criminalisation.

### **Box #2 – Stigmatisation of LGBTI+ Rights Defenders**

The anti-LGBTI+ narrative is stronger than ever in today's Turkey, as the LGBTI+ community gained significant visibility and momentum in the past few years, attracting public attention and exposing them to hateful discourse. This phenomenon is exacerbated by the general hostile environment against civil society actors, and the narrative associating human rights, especially gender rights, with Western propaganda.

High-level State officials increasingly and openly use hateful language against the LGBTI+ community in public discourse, which in turn fuels, or at best legitimises, intolerance, and encourages hate speech on media and by non-State actors. The frequency and intensity of such statements imply a deliberate position against the LGBTI+ community by the State itself. This includes hateful and stigmatising rhetoric

<sup>35</sup> Most recently, IHD was targeted after it held the State accountable for the death of 13 hostages held by the PKK during a Turkish military operation on February 10, 2021. The Interior Minister, during a speech addressing the members of the parliament, targeted IHD and its executives, and referred to IHD as “canı çıkasınca” association (a curse commonly used to wish that great evil, misery, and death befall someone). He also falsely accused IHD of not condemning the massacre of civilians by terrorist organisations, which was denied by the latter in a public statement on February 18. Following the Interior Minister's intervention, IHD began receiving threats through various channels, including by emails, phone, and on social media. For more details see, the Observatory, Statement – Turkey: Stigmatisation and targeting of the Human Rights Association (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>. For IHD's statement see, IHD, İHD's Answer to Interior Minister Süleyman Soylu (February 18, 2021). Available at: <https://ihd.org.tr/en/ihds-answer-to-interior-minister-suleyman-soylu>. In the upcoming weeks, IHD's Co-President Öztürk Türkdoğan faced judicial harassment and arbitrary detention. On March 19, 2021, early in the morning, police officers raided the house of Mr. Türkdoğan in Ankara, and he was taken into police custody on the charge of “membership to an illegal armed organisation” (Article 314/2 of the Criminal Code). The prosecutor asked him questions related to several statements he had made to the press in his capacity as IHD's Co-President, as well as to his phone conversations with international organisations, members of the Parliament, state officials and international delegations. On the same day in the evening, he was released under judicial control, pending investigation, and imposed an international travel ban. See, the Observatory, Urgent Appeal – Turkey: Arbitrary detention and subsequent release of İHD Co-Chairperson Mr. Türkdoğan TUR 002 / 0321 / OBS 039 (March 26, 2021). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-detention-and-subsequent-release-of-ihd-co>

<sup>36</sup> For instance, Selçuk Kozağaçlı, a lawyer and HRD, was arrested on November 13, 2017 following a smear campaign by the Ministry of Interior and the President himself. The President had targeted him and his colleagues five days prior to his arrest, in connection with their legal representation of the families of the miners who lost their lives in the Soma mining disaster. See, Keep the Volume Up for Rights Defenders in Turkey, Lawyers from Contemporary Lawyers' Association (last update on October 13, 2020). Available at: <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association>.

<sup>37</sup> Tahir Elçi, a Kurdish HRD and the former chair of the Diyarbakır Bar Association, was assassinated on November 28, 2015, during an outdoor press conference in Sur, Diyarbakır, that was organised to draw attention to the damage done to cultural heritage during the armed clashes in the city. Prior to his assassination, he was the target of a smear campaign by nationalist groups after he stated on TV that “the PKK is not a terrorist organisation; although some of its activities could qualify as terrorism, it is a political movement, and it is a movement with a broad-based support, making political demands.” He was later investigated for “terrorist propaganda” for his statement and briefly detained in early November 2015. For more details, see, Keep the Volume Up for Rights Defenders in Turkey, Tahir Elçi (last update on November 10, 2020). Available at: <https://www.sessizkalma.org/en/defender/tahir-elci-2>.

by the President and his Ministers targeting LGBTI+ individuals on a regular basis.<sup>38</sup> In addition, other high-level State officials contribute to the stigmatising narrative.<sup>39</sup> For instance, the President of Religious Affairs, the highest representative of the religious establishment within the central administration, targeted LGBTI+ people and people living with HIV in his Friday khutbah (sermon), on April 24, 2020,<sup>40</sup> equating diverse sexual orientations with disease,<sup>41</sup> which has a serious potential to further stigmatise LGBTI+ individuals and communities, especially in the current context of the Covid-19 pandemic. In the aftermath of the Friday khutbah, several human rights organisations and bar associations issued statements condemning the discriminatory language used by the President of Religious Affairs. Yet the President of Turkey himself echoed the narrative heard in the khutbah, by publicly accusing the Ankara Bar Association of intentionally attacking Islam in their statement.<sup>42</sup> Subsequently, as a result of their criticism, a criminal investigation was launched against the Ankara and Diyarbakir Bar Associations on the accusation of “degrading religious values.”<sup>43</sup> Those developments further strengthen fears that the Government and State officials deliberately target those who defend LGBTI+ rights, both within and outside the LGBTI+ community.

Similarly, on pro-Government media, the LGBTI+ community is frequently linked with concepts like “perversion,” and organisations defending LGBTI+ rights are accused of facilitating “Western propaganda aimed at corrupting Turkish society,” and/or of “being related to terrorist organisations.”<sup>44</sup> An LGBTI+ rights organisation reported a

- 38 For instance, in June 2019, during the period leading up to the repeat municipal election in Istanbul, the Ministry of Interior said in a TV programme that the team running for Istanbul Mayor's Office included LGBTI+ persons and members of terrorist organisations, and that he considered both as a “threat” to Istanbul. See, GMAG, Süleyman Soylu: LGBT'yi Türkiye İçin Bir Tehdit Olarak Görüyorum (June 21, 2019). Available at: <https://gmag.com.tr/suleyman-soylu-lgbt-yi-turkiye-icin-bir-tehdit-olarak-goruyorum>. Most recently, on January 30, 2021, the Ministry of the Interior called LGBTI+ individuals “deviant” in his tweet concerning the police custody of four individuals over an artwork depicting LGBTI+ flags alongside the sacred site of Islam, the Kabaa, displayed on campus during the student protests at Bosphorus University in Istanbul. The artwork was deemed insulting to religious beliefs by the authorities and a criminal investigation was launched for “inciting people to hatred.” Twitter flagged the tweet as it violated its rules about hateful conduct. Similarly, within the context of student protests at Bosphorus University, the President also contributed to the stigmatising narrative when he addressed the members of his party on February 1 in the following words: “you are not the LGBT youth, and not the youth who commit acts of vandalism.” See, DW, Twitter'dan Süleyman Soylu'nun tweetine kısıtlama (February 2, 2021). Available at: <https://www.dw.com/tr/twitterdan-s%C3%Bcleyman-soylunun-tweetine-k%C4%B1s%C4%B1tlama/a-56412692>; also see, BBC, Turkey's Erdogan denounces LGBT youth as police arrest students (February 2, 2021). Available at: <https://www.bbc.com/news/world-europe-55901951>.
- 39 Similarly, in July 2019, a weekly khutbah, which is preaching by imams prepared by the Directorate of Religious Affairs, and diffused to all local mosques, used hateful language against LGBTI+ persons, by suggesting that they are acting “against God's will.” The khutbah included passages like, “It is a sin to play with our creation. Any efforts intervening in sex and calling for eradication of sexes prepares individuals as well as the whole generation for disaster. Representing choosing your own sex as an individual freedom is ignoring God's will, overstepping the limits and deviating from servitude to God.” See, DW, Diyanet nikahsız birliktelikleri ve LGBTİ'leri hedef aldı (July 5, 2019). Available at: <https://www.dw.com/tr/diyanet-nikahs%C4%B1z-birliktelikleri-ve-lgbtileri-hedef-ald%C4%B1/a-49490549>.
- 40 For more information, see, Joint statement – End hate speech and targeted attacks against LGBTI people in Turkey (May 12, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/end-hate-speech-and-targeted-attacks-against-lgbti-people-in-turkey>.
- 41 “People! Islam considers adultery as a major sin. It curses Luts [the people of Lut is a group of people who practiced homosexuality according to Quran] and homosexuality. What is the reason behind this? The reason is that it brings diseases and consumes generations. Hundreds of thousands of people a year are exposed to the HIV virus caused by immoral life without marriage, which is a great haram and qualifies as adultery in the Islamic Literature.” See, Diyanet Haber, Cuma Hutbesi 24 Nisan 2020 (April 24, 2020). Available at: <https://www.diyanehaber.com.tr/hutbeler/cuma-hutbesi-24-nisan-2020-h10239.html>.
- 42 Presidency of Turkey Communications Directorate, Cumhurbaşkanı Erdoğan: “Küresel bir felaket halini alan Covid-19 hastalığının üstesinden gelerek, inşallah Ramazan'ın sonunda çifte bayram yapmayı niyaz ediyoruz” (April 27, 2020). Available at: <https://www.iletisim.gov.tr/turkce/haberler/detay/cumhurbaskani-erdogan-kuresel-bir-felaket-halini-alan-kovid-19-hastaliginin-ustesinden-gelerek-insallah-ramazanın-sonunda-cifte-bayram-yapmayi-niyaz-ediyoruz>.
- 43 Bianet, Investigation Against Diyarbakır Bar Association for ‘Degrading Religious Values’ (April 28, 2020). Available at: <https://bianet.org/english/lgbti/223536-investigation-against-diyarbakir-bar-association-for-degrading-religious-values>.
- 44 For the full report please see, KAOS GL, 2019 Medya İzleme Raporu (March 2020). Available at: <https://kaosgldernegi.org/images/library/2020medya-izleme-raporu-2019web.pdf>.

dramatic increase in 2019 in the hateful content on media against LGBTI+ individuals.<sup>45</sup> According to their 2019 media monitoring report, at least half of the relevant content in the written press was discriminatory against LGBTI+ individuals, and LGBTI+ events and assemblies were systematically targeted, while the bans on such events were praised.<sup>46</sup> In 2020, hateful content against LGBTI+ individuals gained further momentum, especially in the aftermath of the discriminatory khutbah by the President of Religious Affairs,<sup>47</sup> testifying to the increase in stigmatising discourse in the media in parallel to the targeting of LGBTI+ people by high-level State officials.<sup>48</sup> Smear campaigns on public media included open calls to shut down all LGBTI+ organisations, and other calls for the violation of their fundamental rights.<sup>49</sup>

Furthermore, the anti-LGBTI+ narrative is also used more and more often to discredit other human rights issues and groups, particularly women's rights defenders, who are in close touch with the LGBTI+ movement.<sup>50</sup> For instance, the Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention") was openly targeted on media and by conservative public figures on the grounds that it would allegedly promote LGBTI+ rights and other values alien to Turkish culture. This was followed by high-level Government officials' statements about re-considering being a party to the Convention, and finally resulted in Turkey's withdrawal from the Istanbul Convention on March 20, 2021, by a Presidential decision.<sup>51</sup>

The relentless targeting and stigmatisation of the LGBTI+ community has a direct impact on the work of LGBTI+ rights defenders. A prominent LGBTI+ rights organisation provided an insight into the stigmatisation and threats they have been facing in an interview published in July 2019.<sup>52</sup> Between January and July 2019 alone, the organisation was targeted five times by a conservative newspaper that systematically publishes hateful content against the LGBTI+ community. As a consequence, they were forced to reduce their visibility, and spent most of their time comforting their volunteer staff and members amid rising threats. The organisation had to keep its office closed for three months from November 2017 to February 2018 due to security concerns arising from smear campaigns. Our sources reported similar experiences, stating that their psychological well-being has significantly deteriorated following smear campaigns on pro-Government media and the targeting of LGBTI+ community in general. A civil society representative described the adverse impacts of the crackdown on LGBTI+ community in the following words: "*Many people in our association have been receiving psychological support due to the violent threats by*

45 KAOS GL, Smear campaigns targeting LGBTI+s becomes widespread in 2019 (April 12, 2020). Available at: <https://kaosgl.org/en/single-news/smear-campaigns-targeting-lgbti-s-becomes-widespread-in-2019>.

46 For the full report please see, KAOS GL, 2019 Medya İzleme Raporu (March 2020). Available at: <https://kaosgl.org/images/library/2020medya-izleme-raporu-2019web.pdf>.

47 For more information, see, KAOS GL, "After the khutbah of Diyanet, LGBTI+'s were shown as hostile on the media" (October 28, 2020). Available at: <https://kaosgl.org/en/single-news/after-the-khutbah-of-diyamet-lgbti-s-were-shown-as-hostile-on-the-media>. For the full report in Turkish see, Diyanet'in Hutbesi Medyaya Nasıl Yansıdı? (October 2020). Erişim: <https://kaosgl.org/images/library/diyamet-hutbesi-2020.pdf>.

48 The 2020 monitoring report of the same organisation also confirms that the smear campaigns on pro-Government media are part of a deliberate and organised campaign against the LGBTI+ community and have increased in parallel to the hateful rhetoric of State officials. KAOS GL, 2020 Media Monitoring Report: Hostility against LGBTI+s is not a coincidence, it is organized! (January 22, 2021). Available at: <https://kaosgl.org/en/single-news/2020-media-monitoring-report-hostility-against-lgbti-s-is-not-a-coincidence-it-is-organized>.

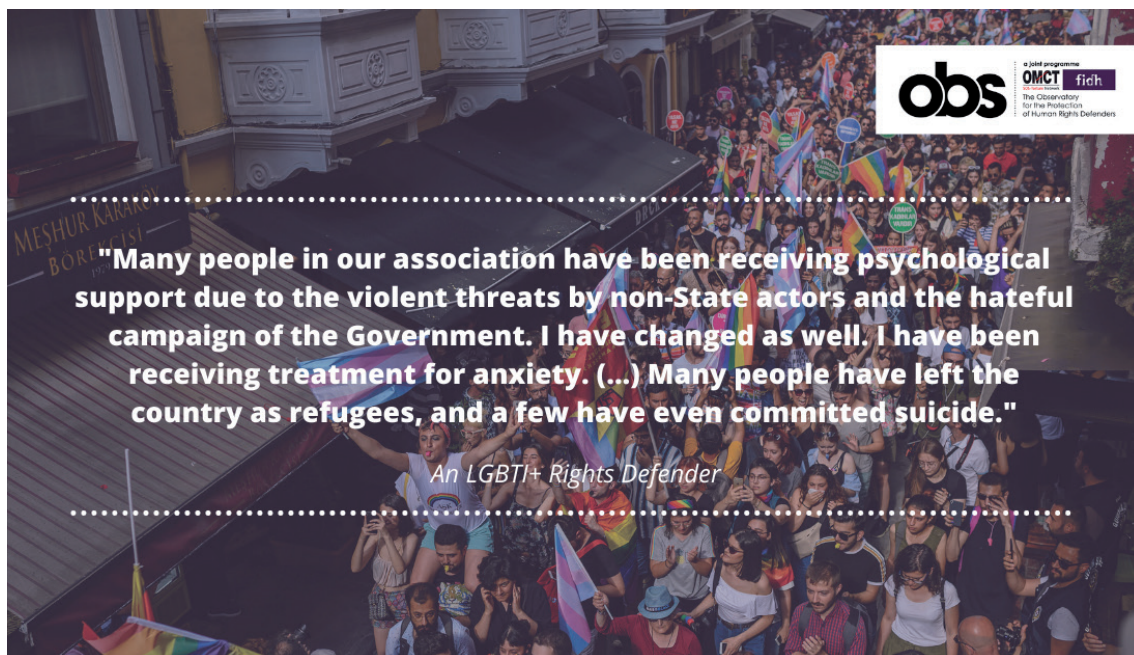
49 KAOS GL, 2020 Media Monitoring Report: Hostility against LGBTI+s is not a coincidence, it is organized! (January 22, 2021).

50 For examples of anti-LGBTI narrative used to discredit Istanbul Convention on media please see, KAOS GL, Akit'in Ekim ayı nefret söylemi listesi (November 11, 2020). Available at: <https://kaosgl.org/haber/akit-in-ekim-ayi-nefret-soylemi-listesi>; for the President's speech about reconsidering being a signatory to Istanbul Convention see, Cumhuriyet, Erdoğan: İstanbul Sözleşmesi'ni gözden geçireceğiz (February 19, 2020). Available at: <https://www.cumhuriyet.com.tr/haber/erdogan-istanbul-sozlesmesini-gozden-gecirecegiz-1721710>.

51 Directorate of Communications of the Presidency of the Republic of Turkey, Statement regarding Türkiye's withdrawal from the Istanbul Convention (March 22, 2021). Available at: <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>.

52 Susma24, "Sansüre karşı savunmadan ziyade teyakkuzdayız" (June 24, 2019). Available at: <http://susma24.com/lgbtilar-terorle-ozdeslestirilince-sansur-sistematiklesiyor>.

*non-State actors and the hateful campaign of the Government. I have changed as well. I have been receiving treatment for anxiety. (...) Many people have left the country as refugees, and a few have even committed suicide.*"<sup>53</sup> Additionally, our sources reported that systematic hostility towards LGBTI+ individuals further discourages them from engaging with the public authorities and judicial bodies in cases of violations of LGBTI+ persons' rights, which in turn increases and/or complicates the work of LGBTI+ rights organisations.<sup>54</sup>



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Many civil society actors believe that pro-Government media and the authorities act in concert in organising smear campaigns against them. Our sources suggested that information collected through criminal and administrative investigations might be intentionally leaked, and shared with the public through pro-Government media. For instance, during the emergency rule, classified information concerning many criminal cases against civil society actors and HRDs, which were not even shared with their lawyers, was shared in the pro-Government media, and the civil society actors and HRDs learned of the indictments issued against them through pro-Government media before receiving any official notification.<sup>55</sup> During the pre-trial phase of a well-known case against civil society actors, allegedly incriminating evidence obtained by the authorities through the confiscation of digital materials of the civil society actors under investigation was shared on pro-Government media, supporting the suspicion that the information may have been leaked by the authorities to raise public support for the investigation. And yet, at the time, the defendants' own lawyers did not know the details of the case due to a confidentiality order restricting access to the case file. On that occasion, pro-Government media portrayed the civil society actors under investigation as "foreign agents" striving to spark mass protests as a continuation of the 2016 attempted coup, by disseminating false information and bending the facts.<sup>56</sup>

53 Online Interview no. 5 in May 2020 with a civil society representative.

54 Online Follow-up Interview no. 17 in March 2021 with a civil society representative.

55 Online Interview no. 10 in May 2020 with a civil society representative.

56 See, Bianet, Hak Savunucularının Avukatlarından Manşetlerdeki İddialara Cevap (July 25, 2020). Available at: <https://m.bianet.org/bianet/insan-haklari/188593-hak-savunucularinin-avukatlarindan-mansetlerdeki-iddialara-cevap>; and Gazete Duvar, Avukat Oya Aydın Göktaş anlattı: Büyükada gözaltıları hakkında her şey (July 29, 2017). Available at: <https://www.gazeteduvar.com.tr/gundem/2017/07/29/avukat-oya-aydin-goktas-anlattı-buyukada-gozaltıları-hakkında-her-sey>.

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Similarly, some civil society actors reported that information about their funding sources and/or the amount of funding received from various institutions, which are shared with the authorities in accordance with legal requirements, were later found on pro-Government media, presented inaccurately or in such a way as to stigmatise their legitimate and legal activities.<sup>57</sup> While there is no conclusive proof at this point, civil society actors suspect that the information might be shared with the pro-Government media by the authorities themselves, since they are the only ones in possession of the records of funding except for the organisations themselves.<sup>58</sup>

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*“There are no legal procedures or mechanisms in Turkey that can effectively prevent smear campaigns.”<sup>59</sup>*

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According to our sources, judicial mechanisms are ineffective against smear campaigns and other degrading narratives.<sup>60</sup> While the courts interpret any expression of criticism as defamation in cases against the President or other Government officials, content and/or speech stigmatising and vilifying civil society actors and HRDs is usually considered by the courts to be a legitimate exercise of freedom of speech. For instance, the Prosecutor’s Office in Küçükçekmece recently refused to launch a criminal investigation against a media outlet that used hateful language against LGBTI+ individuals on a daily basis, and deemed the hateful content to be mere criticism.<sup>61</sup> Some civil society actors reported that they usually refrain from challenging the media outlet and/or Government official behind the stigmatisation, due to a lack of trust in the legal system.<sup>62</sup> It should be noted that except for a few provisions of the Penal Code – which in themselves do not provide adequate protection and redress to victims<sup>63</sup> – there is no specific and comprehensive legislation concerning hate speech in Turkey which could be used by civil society actors as an instrument to legally challenge hateful discourse against them, and that set the limits within which free expression can be exercised without disproportionately impinging upon the speakers’ rights and freedoms.

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57 Online Interview no. 5 in May 2020 with a civil society representative; Online Interview no. 10 in May 2020 with a civil society representative.

58 Online Interview no. 5 in May 2020 with a civil society representative.

59 Online Interview no. 10 in May 2020 with a civil society representative.

60 *Ibid.*

61 KAOS GL, Savcılığa göre “onursuz ibneler” demek ifade özgürlüğü! (January 15, 2020). Available at: <https://kaosgl.org/haber/savciliga-gore-onursuz-ibneler-demek-ifade-ozgurlugu>.

62 Online Interview no. 13 in May 2020 with a civil society representative.

63 For example, see, Article 122 “hate and discrimination,” Article 125 “insult,” Article 115 “prevention of the exercise of freedom of belief and thought,” Article 153 “damaging places of worship and cemeteries,” and Article 216 “inciting people to hatred and enmity.” For a more detailed analysis of hate crimes and relevant legislation in Turkey see, IHD, Special Report on Hate Speech and Hate Crimes in Turkey (September 22, 2020). Available at: [https://ihd.org.tr/en/wp-content/uploads/2020/09/sr20200922\\_Hate-Crimes-and-Racist-Attacks-Report\\_Sept-2020.pdf](https://ihd.org.tr/en/wp-content/uploads/2020/09/sr20200922_Hate-Crimes-and-Racist-Attacks-Report_Sept-2020.pdf).



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## b. The Criminal Justice System as a Weapon Against Civil Society: Judicial Harassment, Arbitrary Detention & Travel Bans



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*"During the almost-18-year-old AKP governance, anybody who does not embrace [their opinions] has been accused of terrorism, espionage etc."*<sup>64</sup>

### i. Judicial Harassment and Criminalisation

Criminalisation and judicial harassment of civil society actors and HRDs is a widespread practice in today's Turkey. These groups face the risk of criminal investigation and/or prosecution for any expression of dissent, e.g. through social media posts, press statements, and participation in assemblies, or for taking part in civil society activities such as trainings, seminars, and other events. Many criminal proceedings launched prior to and under the emergency rule remain pending when they haven't already led to the conviction of the

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<sup>64</sup> Online Interview no. 8 in May 2020 with a civil society representative.

accused,<sup>65</sup> and new criminal investigations are constantly being launched against civil society actors and HRDs.

The legal basis for civil society's alleged crimes vary: "terrorist propaganda" under the Anti-Terror Law<sup>66</sup>; "membership in a terrorist organisation," "inciting the public to hatred and enmity," and "defamation of the President" under the Criminal Code<sup>67</sup>; and "participating in an illegal assembly" under the Law on Assemblies<sup>68</sup> are the most common ones. In particular, the Anti-Terror Law has drawn serious criticism from domestic and international actors for providing a vague and over-broad definition of what constitutes "terrorism" that allows for a loose interpretation, leading to the criminalisation of a wide range of activities, including activities that do not involve violence.<sup>69</sup> Despite various attempts to reformulate certain provisions of the Anti-Terror Law over the years,<sup>70</sup> the Law as it stands is still problematic as it paves the way to criminalisation of, *inter alia*, freedom of expression and freedom of association. The vague wording of the Law, combined with the lack of institutional safeguards ensuring the independence of the judiciary from the political power, makes it a significant tool in the hands of the Government to criminalise any expression of dissent and to target opponents.

65 For instance, Şebnem Korur Fincancı, a forensic physician and the former chair of TIHV, was arrested on June 20, 2016 on the grounds of "terrorist propaganda" for her participation in the "co-editor-in-chief" campaign of *Özgür Gündem* (Free Agenda) to support the imprisoned editorial staff of the newspaper. She was released on June 30, 2016, and acquitted by the court of first instance on July 17, 2019. However, the verdict was appealed by the prosecutor and was overturned by the 3rd Criminal Chamber of the Istanbul Regional Appeals Court on November 3, 2020. The re-trial began on February 3, 2021. The procedure remains pending and the next hearing will take place on May 6, 2021. In another case that was based on her social media posts in relation to the Gezi Park protests, she was convicted of "insulting a public official" on February 16, 2021, and received a monetary fine of 7,800 TRY (approximately 870 EUR). For the recent developments in her case, see, Keep the Volume Up for Rights Defenders in Turkey, Şebnem Korur Fincancı (last update on February 16, 2021). Available at: <https://www.sessizkalma.org/en/defender/sebnem-korur-fincanci-2>; also see, the Observatory, Statement – Turkey: Şebnem Korur Fincancı, Erol Önderoğlu and Ahmet Nesin to be retried on terrorism charges (February 2, 2021). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-sebnem-korur-fincanci-erol-onderoglu-and-ahmet-nesin-to-be>. Another example is the case of Serdar Küni, a physician, member of TIHV Cizre Reference Center, and the President of Şırnak Medical Association. He was detained on October 19, 2016 on the grounds that he had medically treated members of a terrorist organisation during the 2016 curfews in Cizre. He was charged with "aiding and abetting a terrorist organisation." On April 24, 2017, he was sentenced to four years and two months in prison, but the decision was later overturned. Subsequently, he was sentenced to four years and two months in prison in November 2020, this time for "membership in a terrorist organisation." The case remains pending before the appeals court. For more information and the latest developments in his case see, Keep the Volume Up for Rights Defenders in Turkey, Serdar Küni (last update on November 16, 2020). Available at: <https://www.sessizkalma.org/en/defender/serdar-kuni-2>; also see, the Observatory, Open Letter – Turkey: Concerns regarding the judicial harassment of physician and HRD Dr. Serdar Küni (January 11, 2021). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-open-letter-concerns-regarding-the-judicial-harassment-of>.

66 Article 7/2 of the Anti-Terror Law no. 3713 (*Terörle Mücadele Kanunu*) published in the Official Gazette no. 20843 (duplicate), dated April 12, 1991 and entered into force through its publication.

67 Articles 314, 216 and 299 of the Turkish Criminal Code no. 5237 (*Türk Ceza Kanunu*) published in the Official Gazette no. 25611, dated October 12, 2004 and entered into force on June 1, 2005.

68 Article 28 of the Law no. 2911 on Assemblies and Demonstrations (*Toplantı ve Gösteri Yürüyüşleri Kanunu*) published in the Official Gazette no. 18185, dated October 8, 1983, and entered into force three months after its publication.

69 For a more detailed analysis of the Anti-Terror Law, see, IHD, Anti-Terrorist Repression in Turkey: Excessive and Unlawful, pp. 16-19 (October 26, 2017). Available at: [https://ihd.org.tr/en/wp-content/uploads/2017/11/IHD\\_anti-terrorist-repression-excessive\\_and\\_unlawful-ENGLISH.pdf](https://ihd.org.tr/en/wp-content/uploads/2017/11/IHD_anti-terrorist-repression-excessive_and_unlawful-ENGLISH.pdf). For examples of criticism expressed by international actors, see, European Commission, Turkey 2020 Report, particularly p. 33 (October 6, 2020). Available at: [https://www.ab.gov.tr/siteimages/trkiye\\_raporstrateji\\_belgesi\\_2020/turkey\\_report\\_2020.pdf](https://www.ab.gov.tr/siteimages/trkiye_raporstrateji_belgesi_2020/turkey_report_2020.pdf); UN Special Rapporteurs, Joint Communication OL TUR 13/2020 (August 26, 2020). Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25482>; Commissioner for Human Rights of the Council of Europe, CommDH(2017)5, Memorandum on freedom of expression and media freedom in Turkey, particularly para. 124 (February 15, 2017). Available at: [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5).

70 The most recent attempt was the amendments enacted by Law no. 7188, adopted in October 2019, to implement the Judicial Reform Strategy introduced by the Ministry of Justice. The Law added the wording, "expressions of thought for the purpose of criticism and within the limits of press reporting do not constitute a crime" in the article on "terrorist propaganda" of the Anti-Terror Law. However, judicial harassment of civil society actors, HRDs, and journalists continues. For more information, see, IHD, İHD Report and Recommendations on the Judicial Reform Strategy Document (October 4, 2019). Available at: <https://ihd.org.tr/en/ihd-report-and-recommendations-on-the-judicial-reform-strategy-document>; also see, International Commission of Jurists & IHOP, Turkey's Judicial Reform Strategy and Judicial Independence (November 18, 2019). Available at: <https://www.icj.org/turkey-judicial-reform-strategy-must-do-more-to-promote-independence-of-turkish-judiciary-warns-icj-and-ihop-briefing-paper>.

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Since the attempted coup, in line with the increasingly shrill narrative labelling them as State enemies and/or foreign agents, prominent civil society actors and HRDs have faced progressively more severe criminal accusations. These actors have been facing trumped-up charges such as “espionage,” “attempting to overthrow the Government by use of force,” and “attempting to overthrow the constitutional order,” which are punishable by severe prison sentences, including life imprisonment.<sup>71</sup>

### **Box #3 – Judicial Harassment of Civil Society Actors and HRDs During the Covid-19 Pandemic**

The Covid-19 pandemic gave the authorities another pretext to further crack down on civil society actors and HRDs. These actors have faced fines for allegedly violating the public health measures, as well as criminal investigations for expressing criticism about the management of the pandemic by the authorities.

Representatives of medical associations have been under the spotlight and been judicially harassed for sharing their views on the management of the pandemic. For instance, the Presidents of the Van-Hakkari and Mardin Medical Associations were summoned by the police to answer accusations of “inciting fear and panic among the public” for bringing attention to the risk of rapid contagion of Covid-19 in the prisons, finding the measures adopted insufficient to curb the spread of the disease, and for criticising the regional health authorities for not sharing information with them.<sup>72</sup> Similarly, a criminal investigation was launched against the prominent HRD Nurcan Baysal on March 30, 2020 based on the accusation of “inciting public to enmity and hatred.”<sup>73</sup> The accusation was based on her social media posts, which included news articles and her opinions on the authorities’ response to the coronavirus outbreak, as well as on complaints from prisoners’ families about inadequate conditions in prisons against the spread of coronavirus.

HRDs have also faced severe monetary fines for allegedly breaching Covid-19 measures. Public health measures provided the authorities with yet one more excuse to further restrict public assemblies and meetings, which were already limited by measures adopted in the aftermath of the 2016 coup. Some HRDs have been especially targeted.

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71 In the high-profile Gezi Park trial, 16 civil society actors and HRDs were charged with “attempting to overthrow the Government by use of force” for their alleged involvement in the “planning” of Gezi Park protests, an offence punishable by a life sentence. Prominent HRD and businessperson Osman Kavala, who has been arbitrarily detained since October 2017, was also charged in the same case. While he was acquitted of this charge on February 18, 2020, he was re-arrested on the same day, before leaving the prison premises, this time on the grounds of “espionage,” and then “attempting to overthrow the constitutional order,” which are respectively punishable by up to 20 years in prison and by a life sentence. Despite an ECtHR decision recognising that his arbitrary arrest constituted a violation of his rights, the authorities have refused to implement the judgement, and he still remains behind bars facing the above-mentioned charges. For more information on his case, see, Keep the Volume Up for Rights Defenders in Turkey, Osman Kavala (last update on December 29, 2020). Available at: <https://www.sessizkalma.org/en/defender/osman-kavala-2>; and see, the Observatory, Statement – Turkey: Gezi Park defenders acquitted – Osman Kavala faces new charges (February 28, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/gezi-park-defenders-acquitted-osman-kavala-faces-new-charges>. For the ECtHR judgment see, ECtHR, *Kavala v. Turkey*, application no. 28749/18, decision dated December 10, 2019 and finalised on May 11, 2020. Available at: <http://hudoc.echr.coe.int/eng/?i=001-199515>. Turkish text available at: <http://hudoc.echr.coe.int/eng/?i=001-199515>.

72 Keep the Volume Up for Rights Defenders in Turkey, Presidents of Van-Hakkari and Mardin Medical Chambers (last update on November 13, 2020). Available at: <https://www.sessizkalma.org/en/defender/presidents-of-van-hakkari-and-mardin-medical-chambers>.

73 For more information see, the Observatory, Statement – Turkey: Judicial harassment of Ms. Nurcan Baysal TUR 004 / 0420 / OBS 030 (April 2, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-ms-nurcan-baysal>.

For instance, environmental defenders resisting a Canadian gold mining project in the Kaz Mountains, in the West of the country, have faced serious repression. At the beginning of the pandemic, environmental defenders announced that they had limited the number of people at the camping/protesting site to seven, and were isolating themselves from the general public.<sup>74</sup> Nevertheless, they were fined on the grounds of “disrupting public morality, public health and environment,” while the activities of the mining company continued without any disruption.<sup>75</sup> The issuing of fines continued on public health grounds, even after most of the Covid-19-related restrictions were lifted nationwide in June 2020. By the end of 2020, the amount of fines levied on the environmental defenders exceeded TRY 500,000 (approximately EUR 55,000).<sup>76</sup> In September 2020, environmental defenders were removed from the area, where they had been camping for 425 days to protest the mining project, and briefly taken into police custody.<sup>77</sup> It is indeed questionable whether environmental defenders isolated in a forestry area and allegedly respecting social distancing measures posed public health risks, and the issuance of exorbitant amounts of fines raises serious concerns about the proportionality of the measures taken against them, fuelling civil society actors’ suspicion that the pandemic was used, in this case, as a pretext for the harassment of the HRDs.

Another worrying practice is the use of past civil society activities as a basis for criminal investigations. Especially before 2015, when the peace process between the Government and the PKK was still ongoing, many civil society actors felt safer in expressing their criticism through civil society activities, tweets, and participation in assemblies, since the environment was more permissive.<sup>78</sup> Those activities or expressions of dissent from years ago are now

74 Yeşil Gazete, Kazdağları’ndaki çadırli nöbet koronavirüs bahanesiyle sonlandırılmak isteniyor (April 21, 2020).

Available at: <https://yesilgazete.org/kazdaglarindaki-cadirli-nobet-koronavirus-bahanesiyle-sonlandirilmak-isteniyor>.

75 Yeşil Gazete, Kazdağları’nda ruhsatsız şirkete izin, çadırli nöbetçilere 57 bin lira ceza (May 11, 2020). Available at: <https://yesilgazete.org/kazdaglarinda-ruhsatsız-sirkete-izin-cadirli-nobetçilere-57-bin-lira-ceza>.

76 Keep the Volume Up for Rights Defenders in Turkey, Watch for Water and Conscience Activists (last update on December 22, 2020). Available at: <https://www.sessizkalma.org/en/defender/watch-for-water-and-conscience-activists>.

77 *Ibid.*

78 Online Interview no. 2 in May 2020 with a civil society representative; Online Follow-up Interview no. 18 in March 2021 with a civil society representative. In this respect, numerous IHD executives and members have faced prison sentences and judicial harassment based on terrorism charges for their civil society activities as well as their participation in assemblies and other peaceful activities. For a detailed list of criminal investigation and prosecutions launched against IHD executives and members, please see, IHD, 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](https://ihd.org.tr/en/wp-content/uploads/2019/06/20190531_Special-ReportOnHRAHRDs.pdf).

A striking example in this respect is the criminalisation of prominent Kurdish civil society actors, HRDs, lawyers, and politicians based on their previous – actual or alleged – association with the Democratic Society Organisation (*Demokratik Toplum Kongresi – DTK*), an umbrella organisation for Kurdish rights which had also engaged with the authorities during the peace process but was recently considered to be linked to the PKK by the Court of Cassation of Turkey (decisions no. 2019/7385 and no. 2020/1360). The crackdown on DTK activities had a direct impact on Kurdish civil society, including those working on prisoners’ rights, torture, women’s rights, and environmental rights, who had been directly involved in DTK and/or had participated in their activities on behalf of civil society. Many have faced judicial harassment based on terrorism charges, or even detention for merely participating in a conference or speaking at an event organised by the DTK, without further analysis of how their involvement could be linked to the activities of a terrorist organisation. Mehmet Raci Bilici (see the footnote below for more details on his case) and Şeyhmuz Gökalp are among such criminalised civil society actors. For more information on the recent crackdown see, the Observatory, statement – Turkey: Stop judicial harassment of civil society in southeast Turkey (November 27, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-stop-judicial-harassment-of-civil-society-in-southeast-turkey>; and The Observatory, urgent appeal – Turkey: Release and ongoing judicial harassment of Dr. Şeyhmuz Gökalp, TUR 010 / 1120 / OBS 135.1 (February 12, 2021). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-release-and-ongoing-judicial-harassment-of-dr-seyhmuz-gokalp>.

Despite the Court of Cassation rulings deeming DTK to be an illegal organisation, ECtHR, in its judgement on December 22, 2020 by the Grand Chamber in the case of *Selahattin Demirtaş v. Turkey* (no.2) - application no.14305/17, ruled that the participation in peaceful assemblies of DTK is linked to the exercise of the rights under the ECHR, in particular Articles 10 and 11. See paragraph 329 of the relevant judgement.

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being brought to the surface by prosecutors, and used as a pretext to criminalise and judicially harass civil society actors and HRDs long after the incriminating acts have taken place.<sup>79</sup> This also points to an even more worrying development, namely the profiling of civil society actors and HRDs over the years and the assembling of files against them, comprised of allegedly incriminating activities, which may be used by the authorities whenever needed.<sup>80</sup> In the words of a civil society actor interviewed by the Observatory, whose experience exemplifies this practice, when an investigation was launched into their organisation's press statement, "all their previous activities were scrutinised to find anything that could constitute a crime," and they felt like the authorities could find a pretext whenever they wish to target civil society actors and HRDs.<sup>81</sup>

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*"We all have some sort of a profile. They have the power to use those against us anytime they want."*<sup>82</sup>

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Another practice contributing to the stigmatisation of civil society actors and HRDs – thus legitimising their criminalisation – is the disproportionate police presence during the raids of their offices and homes in the context of criminal investigations against them. Our sources suggested that, by acting as if they are dealing with armed and dangerous criminals, the police and/or the special forces contribute to establishing such an image.<sup>83</sup> Civil society actors and HRDs report being summoned in the middle of the night and brought to police stations by police forces heavily armed and/or in disproportionate numbers. There has been numerous instances when the doors of their apartments were destroyed and heavily armed forces raided their homes, where their family members, including children, live with them.<sup>84</sup> The necessity of the use of such force by the security forces, and its proportionality in such cases, are highly questionable. They suggest a deliberate attempt at discrediting civil society actors and HRDs by contributing to portraying them as criminals in the eyes of the general public.

## **ii. Arbitrary Detention and Other Measures Restricting Freedom of Movement**

Within the scope of criminal investigations and/or prosecutions, many civil society actors and HRDs face the risk of police custody and prolonged arbitrary detention, including pre-trial detention, which has become an additional tool to punish and intimidate civil society actors, HRDs, and others who express criticism. Article 13 of Law no. 7145,<sup>85</sup> which entered into force in July 2018 to ensure that some exceptional powers remain in effect even after the end of the emergency rule, limits the police custody period to four days for terrorism-related crimes, which may be extended twice, allowing for a total of 12 days in police custody without being referred to a judge. This temporary provision remains in force until July 31, 2021, ensuring a *de facto* emergency rule. Article 19 of the Constitution, on the other hand, limits the police custody period, without a judge's order, to four days, for similar crimes in ordinary times.

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79 For example, on March 12, 2020, Mehmet Raci Bilici was sentenced to six years and three months imprisonment for "membership in a terrorist organisation" for his legitimate human rights work between 2011 and 2014 on behalf of IHD as a board member and former chair of IHD's Diyarbakır branch. See, the Observatory, Joint Statement – Turkey: Human rights defender Mehmet Raci Bilici unfairly convicted (March 24, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/human-rights-defender-mehmet-raci-bilici-unfairly-convicted>.

80 Online Interview no. 10 in May 2020 with a civil society representative.

81 Online Interview no. 12 in May 2020 with a civil society representative.

82 Online Interview no. 10 in May 2020 with a civil society representative.

83 Online Interview no. 13 in May 2020 with a civil society representative.

84 For example see, Front Line Defenders, Nurcan Baysal's house violently raided (October 25, 2019). Available at: <https://www.frontlinedefenders.org/en/case/nurcan-baysals-house-violently-raided>.

85 Law no. 7145 on the Amendment of Certain Laws and Decree Laws (*Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun*) published in the Official Gazette no. 30495, dated July 31, 2018, and entered into force on the date of its publication.

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In addition to prolonged periods in police custody, pre-trial detention is also a serious concern for civil society actors and HRDs. In some cases, they spend months behind bars without an indictment, not even aware of the formal charges against them.<sup>86</sup> Pre-trial detention measures are arbitrarily applied by judges, regardless of whether the conditions under Article 100 of the Criminal Procedure Code – which addresses pre-trial detention, which is treated as an exceptional measure – are fulfilled.<sup>87</sup> The system of criminal peace judgeships, introduced in April 2014, also ensured a closed system of judges issuing pre-trial detention orders, and contributed to the widespread use of pre-trial detention as a tool to harass civil society actors, HRDs, and opponents in general.<sup>88</sup> Under the new system, measures taken during the criminal investigation phase, including pre-trial detention, fall under the exclusive competence of criminal peace judges, whose decisions can only be challenged before another criminal peace judge rather than a higher court, thus establishing a closed system of appeals, which was openly criticised by the European Commission for Democracy Through Law (“Venice Commission”).<sup>89</sup>

In response to the ongoing international and domestic criticism over prolonged pre-trial detention and other issues affecting the judiciary, the Ministry of Justice released a Judicial Reform Strategy in May 2019. Then, in October 2019, Law no. 7188<sup>90</sup> came into effect, enacting changes in various areas, including prolonged pre-trial detention. According to Article 18 of Law no. 7188, the length of pre-trial detention shall be limited to six months for crimes falling outside the jurisdiction of criminal courts for serious crimes, and one year for crimes within the jurisdiction of the Heavy Penal Courts (courts that handle serious crimes). However, for terrorism-related and certain other crimes, including “attempting to overthrow the constitutional order,” pre-trial detention may last as long as one year and six months, which can be extended for another six-month period. Those limitations only apply to pre-trial detention, and do not concern the detention period during the trial phase, which starts after the issuance of the indictment. Furthermore, considering that many civil society actors and HRDs face trumped-up terrorism-related accusations, lengthy pre-trial detention periods can still be applied and can create a serious chilling effect among civil society actors. Indeed, the reform did not address the main issue, which lies in the systematic abuse by the authorities, including judicial authorities, of the Anti-Terror Law and pre-trial detention measures to target civil society actors, HRDs, and indeed all dissenting voices.

Arbitrary detention is not the only way to deprive individuals of their right to liberty and freedom of movement within the scope of a criminal investigation and/or prosecution. Even in cases where they are not detained, civil society actors and HRDs frequently face measures

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86 For instance, prominent HRD and businessperson Osman Kavala, spent more than a year behind the bars without an indictment or formal charges. He was first detained on October 18, 2017, and the indictment was issued on February 19, 2019. See, Free Osman Kavala, Judicial Process (last update on December 3, 2020). Available at: <https://www.osmankavala.org/en/judicial-process>.

87 According to Article 100 of the Criminal Procedure Code, a suspect or accused may be detained “if the facts support the existence of a strong suspicion of a crime” and if a “ground for detention” exists. A ground for detention is deemed to exist in cases exhaustively listed by Article 100, which includes suspicion that the suspect or accused may flee; destroy, hide, or change evidence; or put pressure on witnesses, the victims, or other individuals. A ground for detention is also deemed to exist if there is a strong suspicion that certain crimes listed under the same Article have been committed.

88 See, Yaman Akdeniz & Kerem Altıparmak, Turkey: Freedom of Expression in Jeopardy: Violations of the Rights of Authors, Publishers and Academics under the State of Emergency, pp. 9-10 (March 2018). Available at: [https://www.englishpen.org/wp-content/uploads/2020/07/Turkey\\_Freedom\\_of\\_Expression\\_in\\_Jeopardy\\_ENG.pdf](https://www.englishpen.org/wp-content/uploads/2020/07/Turkey_Freedom_of_Expression_in_Jeopardy_ENG.pdf).

89 The Venice Commission issued a report in 2017 which found that “the system of horizontal appeals among a small number of peace judges within each region or courthouse is problematic,” and that “there are numerous instances where peace judges did not sufficiently reason decisions which have a drastic impact on human rights of individuals.” See, Venice Commission, Opinion on the Duties, Competences And Functioning of the Criminal Peace Judgeships CDL-AD(2017)004, pp. 20-21 (March 2017). Available at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e>.

90 Law no. 7188 on the Amendment of the Criminal Procedure Law and Other Laws (7188 Ceza Muhakemesi Kanunu ve Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun), published in the Official Gazette no. 30928 and dated October 24, 2019.

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such as travel bans<sup>91</sup> and/or the obligation to present themselves regularly for their signature at the police station.<sup>92</sup> Those measures effectively restrict their right to liberty and/or their freedom of movement, and also prevent them from conducting their human rights activities freely, including when these take place outside their place of residence and/or outside Turkey.

### iii. Violation of the Right to a Fair Trial

There are serious indications that the international and domestic standards governing the right to a fair trial are violated regularly at different stages of criminal proceedings. While this Report does not aim to give a detailed analysis of all violations of the right to a fair trial, it is worth mentioning some of the most common trends.<sup>93</sup>

One of the major issues is that neither in the investigation phase nor in the prosecution phase do the criminal proceedings rely on objective and concrete evidence. When civil society actors and HRDs are summoned to testify, they are reportedly questioned about their legitimate human rights activities and their expressions of views on social media. A women's rights defender reported that in some cases, prosecutors show clear political bias during the interrogation.<sup>94</sup> For instance, one prosecutor was not convinced that she was an international activist because she only conducted activities in the countries with which the Government of Turkey did not politically align.

Similarly, indictments often appear to be based on a random collection of allegedly incriminating acts, such as conflicting testimonies of anonymous witnesses,<sup>95</sup> bank transfers to persons

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91 For instance, prominent HRD Eren Keskin was unable to attend the ceremony for the 2019 Martin Ennals Award, presented on February 13, 2019 in Geneva, due to a travel ban preventing her from leaving the country. See, FIDH, Statement – Turkey: FIDH supports the human rights activist Eren Keskin (May 13, 2019). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-fidh-supports-the-human-rights-activist-eren-keskin>. Another recent example is the case of Dr. Şeyhmus Gökalp. He was placed in pre-trial detention on November 23, 2020. The alleged justification for his detention was the existence of a “strong suspicion of a crime,” in connection with Dr. Gökalp’s alleged provision of healthcare to members of a terrorist organisation in a hospital during a period he did not work in those premises, as well as with his alleged participation in a meeting considered illegal by public authorities. After more than 80 days of pre-trial detention on the charge of “membership of an armed organisation” (Article 314/2 of the Turkish Criminal Code), on February 10, 2021, Diyarbakır’s 10<sup>th</sup> Heavy Penal Court ordered his release. However, he was banned from leaving the country. See, the Observatory, Urgent Appeal – Turkey: Release and ongoing judicial harassment of Dr. Şeyhmus Gökalp, TUR 010 / 1120 / OBS 135.1 (February 12, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-release-and-ongoing-judicial-harassment-of-dr-seyhmus-gokalp>.

92 For instance, six women’s rights defenders, among the group of women who gathered in Kadıköy, İstanbul in December 2019 for a remake of the dance performance “A Rapist in Your Path,” staged by the Chilean group Las Tesis to protest violence against women, were taken into police custody after the protest. They were released the following day on probation. While the requirement to appear weekly at the police station was later lifted, the criminal case against six women’s rights defenders remains pending on the charge of “failing to disperse despite police warning.” For more information on their case, see, Keep the Volume Up for Rights Defenders in Turkey, Las Tesis Activists (last update on November 11, 2020). Available at: <https://www.sessizkalma.org/en/defender/las-tesis-activists>. Similarly, 18 women’s rights defenders who were detained on the night of March 10, 2021 after their participation in the International Women’s Day demonstration in Taksim, İstanbul on March 8, were released on probation on the following day and some were given a travel ban. The criminal investigation based on the accusation of “insulting the President” for their slogans and chants during the demonstration is still pending. BBC News, Feminist Gece Yürüyüşü sonrası gözaltına alınan kadınlar adli kontrole serbest bırakıldı (March 11, 2021). Available at: <https://www.bbc.com/turkce/haberler-turkiye-56355921>.

93 For a more detailed analysis of the violation of the right to a fair trial in Turkey in different contexts please see, Media and Law Studies Association & International Press Institute, Turkey Free Expression Trial Monitoring Report (March 2020). Available at: [https://www.mlsaturkey.com/wp-content/uploads/2020/06/ENG\\_TMReport\\_0623.pdf](https://www.mlsaturkey.com/wp-content/uploads/2020/06/ENG_TMReport_0623.pdf); IHD, İHD Report on the “New Human Rights Action Plan” (January 21, 2020). Available at: <https://ihd.org.tr/en/ihd-report-on-the-new-human-rights-action-plan>; IHD, İHD Report and Recommendations on the Judicial Reform Strategy Document (October 4, 2019). Available at: <https://ihd.org.tr/en/ihd-report-and-recommendations-on-the-judicial-reform-strategy-document>; Human Rights Watch, Lawyers on Trial – Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey (April 10, 2019). Available at: <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

94 Online Interview no. 6 in May 2020 with a civil society representative.

95 For example, see, the Observatory, Urgent Appeal – Turkey: Judicial harassment of 19 prominent human rights lawyers from the Progressive Lawyers’ Association TUR 006 / 0620 / OBS 063 (June 8, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-19-prominent-human-rights-lawyers-from>.

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allegedly connected to terrorist organisations,<sup>96</sup> wiretaps of phone conversations with other civil society actors,<sup>97</sup> participation in civil society events<sup>98</sup> and/or protests, social media posts,<sup>99</sup> and any number of other circumstantial pieces of “evidence.”<sup>100</sup> The lack of credible evidence also seriously affects the ability of charged civil society actors and HRDs, as well as their legal representatives, to mount a defence, as this often consists in struggling to refute baseless allegations that consist of mere assertions, while in some cases they are even denied access to the case file. This practice also appears to violate the presumption of innocence, as the burden of proof ends up being carried by the defence rather than the accuser. Court decisions also often lack concrete evidence and, in many cases, are not accompanied by sound legal argumentation establishing the causal link between the defendants’ conduct and the facts on which they are convicted, which in turn makes it difficult for the defence to appeal.

The attitude of the judges and prosecutors during the criminal proceedings was also criticised by several sources for violating the principle of impartiality, the right to a defence, as well as the right to effective participation in the proceedings. A hostile attitude of judges towards civil society actors and HRDs were observed in many cases. This restricts the lawyers’ ability to effectively defend the accused civil society actors and HRDs throughout the procedure. For instance, there are several reports of civil society actors, HRDs, and their lawyers being repeatedly interrupted by judges.<sup>101</sup> Furthermore, during some hearings, defendants and/or their lawyers were manhandled by the security forces and/or ordered to be taken outside the court room on disproportionate and/or vague grounds such as not “behaving appropriately,” while the proceedings continued in their absence.<sup>102</sup>

Even more concerning in terms of the independence of the judiciary, there have been instances where there were serious concerns about judges being pressured to reverse their decisions, and where judges who issued decisions acquitting and/or ending the arbitrary detention of civil society actors and HRDs have been suspended from those cases and replaced with others.<sup>103</sup> Such practices are extremely worrying, and signal the exercise of political control over judges, as well as significant limitations to the principle of the independence of judiciary.

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96 For example, see, the Observatory, Urgent Appeal – Turkey: Four human rights defenders convicted under terrorism charges TUR 005 / 0717 / OBS 078.8 (July 6, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-four-human-rights-defenders-convicted-under-terrorism-charges>.

97 For example, see, the Observatory, Joint Statement – Turkey: Human rights defender Mehmet Raci Bilici unfairly convicted (March 24, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/human-rights-defender-mehmet-raci-bilici-unfairly-convicted>.

98 For example a criminal investigation was launched in November 2020 into the Immigration Monitoring Association’s (*Göç İzleme Derneği*) reports titled, “The rights violations and experiences by women during the curfews and forced migration process” and “legal remedies guide for those who are displaced in Turkey.” See, Initiative against Thought Crimes (*Düşünce Suçuna Karşı Girişim*), *Göç İzleme Derneğine açılan dava* (November 6, 2020). Available at: <https://www.dusun-think.net/haberler/goc-izleme-dernegine-acilan-dava>.

99 For example, see, the Observatory, Urgent Appeal – Turkey: Continuing judicial harassment of Ms. Eren Keskin TUR 001 / 0120 / OBS 002.1 (June 12, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-continuing-judicial-harassment-of-ms-eren-keskin>.

100 For an analysis of the indictments in the Gezi Park Trial, in which high profile civil society actors including Osman Kavala are criminalised, please see, 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>.

101 For instance, during the first hearing in October 2020 of the case launched against the suspects for the assassination of Tahir Elçi in 2015, an HRD and the former chair of the Diyarbakır Bar Association, his family and their lawyers were repeatedly interrupted, their legitimate requests were denied, and they were threatened with being removed from the courtroom. Subsequently the lawyers challenged the panel for its lack of impartiality. While many journalists were not let into the courtroom because of the pandemic, police officers were present. See, Bianet, Trial begins 5 years after Tahir Elçi murder, all requests rejected (October 21, 2020). Available at: <https://bianet.org/english/law/233091-trial-begins-5-years-after-tahir-elci-murder>.

102 For example, see, Keep the Volume Up for Rights Defenders in Turkey, Lawyers from Contemporary Lawyers’ Association (last update on October 13, 2020).

103 For instance, in the trial of the lawyers of the Progressive Lawyers Association, on September 14, 2018, all 17 detained lawyers were released by İstanbul 37th Heavy Penal Court. Nevertheless, the same panel of judges ordered the re-detention of 12 lawyers, in less than 24 hours following their initial decision, after the prosecutor contested the decision. Subsequently, the panel of judges who had ordered their release was taken from the case and moved to other courts. See, the Observatory, Urgent Appeal – Turkey: Judicial harassment of 19 prominent human rights lawyers from the Progressive Lawyers’ Association TUR 006 / 0620 / OBS 063 (June 8, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-19-prominent-human-rights-lawyers-from>.



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#### iv. Prison Sentences and Other Repercussions

As a result of these criminal prosecutions, many civil society actors and HRDs are convicted and receive prison sentences and/or fines.<sup>104</sup> Even if the enforcement of a prison sentence is suspended, it has severe consequences for the convicted. A suspended prison sentence may be enforced if the relevant person is convicted again within a five-year period, which has the potential to create a chilling effect on their future civil society and human rights activities in a context where these are often criminalised. In addition to the suspension of prison sentences, another measure at the disposal of courts is the "deferral of the pronouncement of the judgement" (*hükmün açıklanmasının geri bırakılması*).<sup>105</sup> It enables the court to defer pronouncing the verdict. If the pronouncement of the verdict is deferred, which requires the prior consent of the defendant, the criminal case is closed at the end of the probation period and not reflected in the criminal records of the defendant, provided that the person does not wilfully commit any other crime in the next five years. In practice, this institution is also turned into a tool to intimidate civil society actors and HRDs, pushing them to accept the deferral instead of taking the risk of waiting for the verdict, which may result in an unjust conviction in a context where serious concerns over judicial independence exist.

In addition to the chilling effect, both prosecutions and convictions have other serious impacts on civil society actors and HRDs who exercise certain professions. For instance, individuals who have been convicted of wilfully committing a crime and received a prison sentence longer than a year are not eligible for public employment, in accordance with Article 48 of the Law on Civil Servants.<sup>106</sup> Similarly, when a criminal case is launched against a lawyer, the relevant bar association is notified, and is required to launch a disciplinary proceeding, pending the outcome of the criminal prosecution.<sup>107</sup> Furthermore, a lawyer's license to practice is withdrawn if they are convicted of certain crimes or sentenced to a prison sentence for more than two years for a wilfully committed crime, in accordance with Article 74 of the Attorneyship Act.<sup>108</sup>

The practices of judicial harassment and arbitrary detention that have been described above are among the main instruments of the crackdown on civil society actors and HRDs. Through the abuse of the criminal justice system, an environment of fear and repression is established, in which every single step that civil society actors and HRDs take may result in a criminal investigation. These practices not only violate the freedom of association, but also other fundamental rights including the right to liberty and security, along with the right to a fair trial, all of which are recognised under the Constitution of Turkey and the international standards to which Turkey has adhered.

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104 An extreme example of this trend is the judicial harassment faced by the prominent HRD, Eren Keskin. A total of 143 cases, some of which were later combined, have been lodged against Eren Keskin, including for joining the "co-editor-in-chief" campaign of Özgür Gündem (Free Agenda), which was organised between May and August 2016, to support the imprisoned editorial staff of that newspaper. To date, she has been sentenced to a total of 26 years and 9 months in prison, in cases still pending before the Court of Appeals and the Court of Cassation, and assessed over TRY 400,000 (approximately EUR 45,000) in fines. In the cases imposing fines on her, judicial remedies were exhausted for the fines amounting to more than TRY 184,000 (approximately EUR 20,000) – and she had already paid that amount thanks to national and international solidarity – while the remainder of the fines are still pending before the Court of Appeals and the Court of Cassation. See, the Observatory, Urgent Appeal – Turkey: Turkey: Continuing judicial harassment of Ms. Eren Keskin TUR 001 / 0120 / OBS 002.1 (June 12, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-continuing-judicial-harassment-of-ms-eren-keskin>. Most recently, on February 15, 2021, Eren Keskin was convicted of "membership to an illegal armed organisation" (Article 314/2 of the Criminal Code) in the Özgür Gündem trial. See, the Observatory, Urgent Appeal – Turkey: Sentencing of human rights lawyer Eren Keskin TUR 001 / 0120 / OBS 002.3 (February 17, 2021). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-sentencing-of-human-rights-lawyer-eren-keskin>. The court decision echoes the stigmatising narratives against HRDs by mentioning "the need for more domestic and national human rights" and raises further concerns, notably regarding the politicisation of the judiciary. See, the decision of Istanbul's 23rd Heavy Penal Court with the case no. 2020/51 and decision no. 2021/11, p. 29 (February 15, 2021).

105 For more information, see, Ankara Barosu Hukuk Gündemi, *Hükmün Açıklanmasının Geri Bırakılması* (February 2012). Available at: <http://www.ankarabarusu.org.tr/siteler/ankarabarusu/hgdmakale/2012-2/27.pdf>.

106 Law on Civil Servants no. 657 (*Devlet Memurları Kanunu*) published in the Official Gazette no. 12056 and dated July 23, 1965.

107 Online Interview no. 13 in May 2020 with a civil society representative.

108 Attorneyship Act no. 1136 (*Avukatlık Kanunu*) published in the Official Gazette no. 13168, dated April 7, 1969 and entered into force three months after its publication.

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### c. Harassment of Associations Through Administrative Measures

Legislation and regulations impose numerous administrative requirements on civil society organisations. Complex provisions that are open to multiple interpretations and scattered throughout different pieces of legislation, combined with the scarcity of experts focusing on this area, leave civil society organisations in a state of uncertainty while striving to comply with the law. In an environment where civil society actors face generalised hostility and actual harassment on a regular basis, such provisions raise serious concerns for them and their ability to conduct their activities. Our sources reported that they work very hard indeed to ensure that they strictly comply with legislation and regulations, even to the point of dedicating a significant amount of time to administrative requirements as compared to their substantive work on human rights.<sup>109</sup>

In addition to internal auditing mechanisms, civil society organisations are subject to the auditing of multiple authorities, including the revenue office, the National Education Directorate, the relevant governorates, as well as the Civil Society Directorate under the Ministry of Interior for associations, and the General Directorate of Foundations under the Ministry of Culture for foundations.

In parallel to the increasingly hostile environment, more and more civil society organisations report frequent administrative and financial audits in comparison to previous years<sup>110</sup> – with the exception of those organisations who were already under scrutiny, such as those working on issues like torture and abuses by security forces. Predominantly, civil society actors believe that the audits are a means to exert more pressure on them. While it appears that the laws themselves are not abused to harass the civil society organisations, the legal requirements are very strictly implemented in a way that creates excessive bureaucratic burdens, and frequent audits are conducted to seek out even the tiniest traces of non-compliance.

The process of auditing itself is also used as a tool to exert further pressure on civil society organisations, to the extent enabled by the law. Our sources reported that when on-site audits are organised, the officials go through every single document, ask questions about their human rights work, spend hours, days or even weeks in the premises of an organisation, and fines are issued even for the slightest non-compliance.<sup>111</sup> Some organisations reported cases where audits lasted for three to four months, and where they were audited again in the following year without any clear justification.<sup>112</sup> During these periods, several staff members were inevitably tied up with the auditing process, and thus unable to conduct their daily work.<sup>113</sup> Furthermore, the adverse psychological effects were felt by all staff members, who were under the impression that the auditors were looking for any excuse to issue a fine.<sup>114</sup>

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109 Online Interview no. 14 in November 2020 with a civil society representative.

110 For instance, in 2016 IHD and TIHV were subjected to administrative investigations, which were perceived as a retaliation for their human rights work, and they received administrative fines. For more information, see, IHD, Special Report: Increased Pressure on HRDs, IHD and Its Executives, pp. 6-7 (June 21, 2019). Available at: <https://ihd.org.tr/en/special-report-increased-pressure-on-hrds-ihd-and-its-executives>. IHD reported another audit in February 2020, as a result of which a criminal investigation was launched by the Prosecutor's Office in Ankara.

111 For example, in November 2019, the Antakya Purple Solidarity Women's Association (*Antakya Mor Dayanışma Kadın Derneği*), a women's rights organisation based in Antakya, which advocates against gender-based violence, organises awareness-raising events and follows gender-based violence cases, was subjected to a TRY 51,168 fine (approximately EUR 7,730 at the time of issuance of the fine) for allegedly "organising trainings without permission." Subsequently, their premises were sealed without any notice of this particular measure. Previously, in August 2019, officials from the District Directorate of National Education accompanied by the police had visited the organisation's premises and taken pictures of the voluntary activities taking place in their premises, without an official search warrant. The women and their children, taking part in the activities, were asked questions about whether they made any payments to the organisation. Women's rights defenders were concerned that the police's presence in their building and their harassment was mainly aimed at stigmatising them in the eyes of the community, with which they work in close contact, and at obstructing their work. See, The Observatory, Press Release – 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>.

112 Online Interview no. 5 in May 2020 with a civil society representative.

113 *Ibid.*

114 *Ibid.*

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#### **Box #4 – One Association’s Experience of Administrative Harassment**

An association shut down by an emergency decree in November 2016 recounted the administrative harassment that they had experienced in the period prior to their closure.<sup>115</sup> They had already faced a lawsuit aimed at the dissolution of the association based on an allegation of connections with terrorist organisations in February 2013, prior to the emergency rule.<sup>116</sup> The case was dismissed by the court in May 2013, but the harassment of the association did not end.

Prior to the attempted coup in July 2016, they had already gone through a month-long audit by the Ministry of Interior. The civil society representative reported that one of the auditors was actually arrested three days after the attempted coup on the basis of his alleged connections to the plotters. During this month-long audit, the auditors made a copy of almost every single document held by the association. They were questioned over their activities and on the recent amendments to their bylaws, which reflected their policy to adopt a more inclusive language. Staff members had to prepare the numerous documents requested by the auditors outside of working hours, and were unable to conduct their day-to-day activities outside the association. The auditors also questioned their interpretation of certain legal provisions, which had been previously accepted by the tax office, and they were required to pay more taxes as a result. Furthermore, it was reported that the executives of the association later faced criminal prosecution for not complying with certain requirements provided in the Law on Associations in relation to book-keeping. These practices demonstrate how vague administrative and fiscal requirements can be utilised to harass civil society organisations. These legal procedures are still ongoing. What is more striking is that this administrative harassment continued even after the closure of the association by an emergency decree, although they no longer had access to any records or documents, and although the legal personality of the association no longer existed. For example, the executives were informed of the tax debt of the association, and since the association’s bank accounts were frozen, they were not able to use the association’s existing assets to pay the taxes. The executives’ personal assets were instead seized to cover the fiscal and contractual debts of the association.

This continuous administrative harassment amplifies the suspicions that the association had long been stigmatised and deemed “undesirable” by the authorities. While it appears that the audit was used to scrutinise their activities with a view to finding any irregularities that could lead to the dissolution of the association, the emergency rule provided the authorities with a ground to terminate the activities of the association without need for any legal justification.

Law no. 7262, adopted in December 2020, also introduced amendments concerning the auditing of associations by the authorities. In accordance with the amended Article 19 of the Law on Associations, “based on the risk assessments to be made, audits are organised on a yearly basis and at least once in every three years,” whereas previously audits were ad hoc and upon complaint. This vague provision does not provide sufficient legal certainty and foreseeability, including as to the frequency of the audits that each association is subject to. A civil society representative reported that in practice, more outspoken human rights organisations are likely to be audited every year while others will be subject to looser scrutiny and audited only every three years.<sup>117</sup> In addition, in accordance with the said Article, the Ministry of Interior or the governors may now assign any public officials to conduct these

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115 Online Interview no. 15 in November 2020 with a civil society representative.

116 Bianet, Van’da 10 Derneğe Kapatma Davası (February 28, 2013). Available at: <https://bianet.org/bianet/bianet/144753-van-da-10-dernege-kapatma-davasi>.

117 Online Interview no. 16 in January 2021 with a civil society representative.

audits. No criteria are provided by the Law regarding the qualifications or the area of expertise of those assigned officials.

Furthermore, the auditors are now entitled to request all relevant documents from related public entities and private persons, within the scope of the auditing of an association, and the latter cannot contest orders to submit such documents, even on the basis of exceptions that they would be entitled to by dint of other laws. For instance, this vague provision raises concerns as to whether associations' lawyers would be required to submit all the requested documents, even if this were in violation of the attorney-client privilege to which they are entitled under other laws. Indeed, it is not yet clear how those provisions will be interpreted and implemented by the authorities, but their vague wording, coupled with the overall hostile climate and restrictive regulatory framework for civil society organisations, leaves room for further restrictions on their freedom of association and for further potential harassment.

Frequent audits by the authorities are another way in which the Government exerts pressure on civil society. The latter feels the constant threat of administrative sanctions for any minor non-compliance hanging over its head like a sword of Damocles, in addition to their other financial, psychological, and human resources-related impacts on civil society. Whereas, in practice, sanctions beyond monetary fines have until now been rare, as the environment gets increasingly hostile, civil society organisations are likely to face more serious consequences, up to their dissolution. In particular, the above-mentioned provisions introduced by Law no. 7262 enhance the concerns that associations will be subjected to further administrative constraints and harassment in the coming years.

## **D. Emergency Rule Practices and Their Lasting Impact on Freedom of Association**

### **a. Closure of Associations**

According to the data released by the Inquiry Commission for State of Emergency Measures ("Inquiry Commission"), during the emergency rule, 1,410 associations,<sup>118</sup> 109 foundations,<sup>119</sup> 19 trade unions, and 149 media entities<sup>120</sup> (news outlets, newspapers, TV and radio channels, periodicals, and publishers) were closed down by emergency decrees and without a court decision.<sup>121</sup> While the emergency decrees primarily targeted organisations with alleged connections to the coup attempt of July 2016, human rights groups also became a target later on. Those numbers include associations working on human rights – including women's rights and children's rights – cultural associations, lawyers' associations, and those fighting against poverty. 34 lawyers' associations in 20 provinces, such as the Contemporary Lawyers Association (*Çağdaş Hukukçular Derneği*), the Association of Lawyers for Freedom (*Özgürlükçü Hukukçular Derneği*), and the Mesopotamia Lawyers Association (*Mezopotamya Hukukçular Derneği*), were among the associations shut down by emergency decrees, and these were representing the most vulnerable groups, such as survivors of torture and ill-treatment, as well as people suffering from the curfews in the South-East.<sup>122</sup>

118 188 out of 1,598 initial decisions relating to associations were later overturned by emergency decrees.

119 20 out of 129 initial decisions relating to foundations were later overturned by emergency decrees.

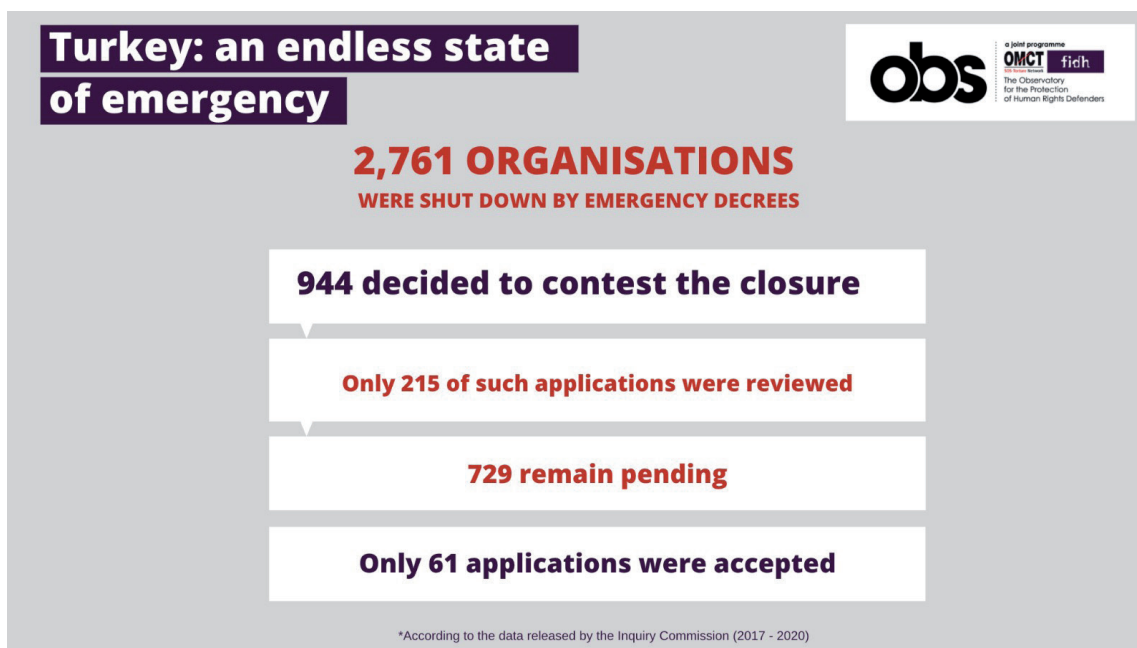
120 21 out of 170 initial decisions relating to foundations were later overturned by emergency decrees.

121 Inquiry Commission, Activity Report 2019, p. 14 (January 31, 2020). Available at: [https://soe.tcgb.gov.tr/Docs/OHAL\\_Report\\_2020.pdf](https://soe.tcgb.gov.tr/Docs/OHAL_Report_2020.pdf). According to the information released by IHOP, combined with the most recent data published after the release of their report, during the emergency rule, approximately 1,619 associations, 168 foundations, 19 trade unions, and 203 media entities (news outlets, newspapers, TV channels, periodicals etc.) were shut down by emergency decrees. At least 188 decisions in relation to shutting down of associations, 23 decisions in relation to foundations, and 25 decisions in relation to media entities were later overturned. See, IHOP, 21 July 2016-20 March 2018 State of Emergency in Turkey: Updated Situation Report, pp. 43-56 (April 17, 2018). Available at: [https://ihop.org.tr/wp-content/uploads/2018/04/SoE\\_17042018.pdf](https://ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf). For additional data in relation to the period from March 20, 2018 until the end of the emergency rule, see, Emergency Decree no. 701 published in the Official Gazette no. 30472, dated July 8, 2018 and entered into force through its publication.

122 International Coalition of Legal Organisations, Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – TURKEY, 35th Session (Jan.-Feb. 2020), para. 45. Available at: <https://lawyersforlawyers.org/wp-content/uploads/2019/07/UPR-Turkey-Combined.pdf>.

The emergency decrees could not be legally challenged before the courts, and the affected civil society actors did not have access to meaningful judicial remedies. The assets of the organisations shut down by emergency decrees were confiscated by the authorities without any form of compensation. While the assets of many media entities,<sup>123</sup> foundations,<sup>124</sup> and associations were transferred to the State budget, the whereabouts of the confiscated assets and whether they were auctioned according to the law remains unclear.

Following consistent criticism by various bodies of the Council of Europe, particularly the Venice Commission, in January 2017 the Inquiry Commission was established to serve as a remedial mechanism against the emergency measures.<sup>125</sup> According to the data released by the Inquiry Commission, since effectively starting its operations in December 2017, until December 31, 2020, the Commission ruled on 112,310 out of 126,630 applications, and only 13,170 applications were accepted while 99,140 were rejected; 61 of those admissibility decisions were related to the re-opening of organisations that were shut down by emergency decrees, including associations, foundations, student dorms, news outlets, and newspapers.<sup>126</sup> The Inquiry Commission's legitimacy, independence, and transparency have been criticised by many civil society actors, as it is not seen as an independent body that can provide a meaningful, effective, and impartial remedy to the victims.<sup>127</sup>



123 Article 2 of the Emergency Decree no. 668 published in the Official Gazette no. 29783 (duplicate), dated July 27, 2016 and entered into force through its publication.

124 Article 2 of the Emergency Decree no. 667 published in the Official Gazette no. 29779, dated July 23, 2016 and entered into force through its publication.

125 Kerem Altıparmak – IHOP, Is The State of Emergency Inquiry Commission, Established By Emergency Decree 685, An Effective Remedy?, p. 3 (February 2017). Available at: <https://www.ihop.org.tr/wp-content/uploads/2017/03/IS-THE-STATE-OF-EMERGENCY-INQUIRY-COMMISSION.pdf>.

126 See, Announcement on the Decisions Of The Inquiry Commission On The State Of Emergency Measures (December 31, 2020). Available at: <https://soe.tcgb.gov.tr>. According to the data released by the Inquiry Commission in their 2020 Activity Report, while a total of 2,761 organisations (including associations, foundations, media institutions, private universities, and others with legal personality) were shut down by emergency decrees, only 944 applications were received by the Inquiry Commission. 215 of those applications were reviewed as of December 31 2020, and 729 applications remain pending. See, Inquiry Commission, Activity Report 2020, p. 28 (February 5, 2021). Available at: [https://soe.tcgb.gov.tr/Docs/SOE\\_Report\\_2020.pdf](https://soe.tcgb.gov.tr/Docs/SOE_Report_2020.pdf).

127 See, IHOP, Is The State of Emergency Inquiry Commission, Established By Emergency Decree 685, an Effective Remedy? (February 2017). Also see, 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://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/5e13373ddb43712f438077a/1578317708753/State+of+Emergency+Commission+Report+Edited+Version+final.pdf>.

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The potential applicants, who were dismissed from their posts in the public service or whose organisations were shut down by emergency decrees, were not informed of any individualised reasoning for their dismissal or the closure of their organisations. When they were challenging the emergency measures before the Inquiry Commission, they had to guess at why they were considered to have “a connection or contact with a terrorist organisation”<sup>128</sup> (*iltisak ve irtibat*), and yet defend themselves based on those potential grounds.<sup>129</sup> In the absence of adequate information relating to the accusations and concrete evidence on which the accusations were based, the rights of defence of the applicants were violated from the very beginning of this process.

The Inquiry Commission reviews the applications on file without conducting a hearing.<sup>130</sup> According to the Inquiry Commission's activity reports, the Commission considers the following factors, among others, while reviewing the applications and deciding whether the applicant has a connection or contact with a terrorist organisation: use of the messaging app *Bylock*, which is alleged to be used by the so-called FETO/PDY<sup>131</sup>; a history of transactions with or accounts opened at Bank Asya, alleged to be connected to FETO/PDY; membership in associations/foundations/trade unions shut down by emergency decrees; a relationship with and/or employment history in organisations with connections to the FETO/PDY; and administrative and criminal investigations/prosecutions.<sup>132</sup> Those factors are indeed theoretically relevant to the assessment concerning individuals who were dismissed by emergency decrees. Yet while it is unclear how this analysis can be applied to organisations shut down by emergency decrees, no further information is provided in that respect.<sup>133</sup>

The decisions are not published, and there is no formal requirement for the Commission to support its decisions by evidence and individualised reasoning.<sup>134</sup> Thus it is incredibly challenging for civil society actors to make a comprehensive analysis of the assessments made by the Commission. According to the reports of international initiatives,<sup>135</sup> in many cases the Inquiry Commission's assessments were based on the information acquired from the intelligence agencies, confidential witness statements, allegations by the applicant's colleagues/employers, and even their social network. None of these documents or information are shared with the applicant during the procedure, and the latter is only informed of their existence to the extent that they are mentioned in the Commission's decision.<sup>136</sup> The above-stated factors, on which the Commission's assessment is based, fall far short of fulfilling the international standards for the right to a fair trial, and consist of no more than assumptions about a party's affiliation with terrorist organisations. What is more striking is that, in its decisions, the Inquiry Commission does not even make an in-depth or individualised analysis based on the above-mentioned criteria, or so reported an international initiative that had collected and analysed some of the decisions.<sup>137</sup> Accordingly, often times the “analysis” goes no further than stating that “the messaging app used by FETO/PDY was downloaded from

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128 Article 1 of the Law no. 7075 Amending and Approving the Emergency Decree on the Establishment of the Inquiry Commission, published in the Official Gazette no. 30354 (duplicate) and dated March 8, 2018.

129 Turkey Human Rights Litigation Support Project, Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission, p. 14 (October 2019).

130 Article 9 of the Emergency Decree no. 685 on the Establishment of the Inquiry Commission (*Olağanüstü Hal İşlemleri İnceleme Komisyonu Kurulması Hakkında Kanun Hükmünde Kararname*) published in the Official Gazette no. 29957, dated January 23, 2017 and entered into force through its publication.

131 The acronym stands for the “Gülen terrorist organisation/parallel state body,” and the term is officially used to describe the US-based cleric Fethullah Gülen's movement, which was claimed to be behind the July 2016 coup attempt.

132 Inquiry Commission, Activity Report 2019, p. 32 (January 31, 2020). Available at: [https://soe.tccb.gov.tr/Docs/OHAL\\_Report\\_2020.pdf](https://soe.tccb.gov.tr/Docs/OHAL_Report_2020.pdf)

133 Online Interview no. 16 in January 2021 with a civil society representative.

134 Venice Commission, Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media CDL-AD(2017)007, para. 87 (March 13, 2017). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e).

135 See, Turkey Human Rights Litigation Support Project, Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission, p. 15 (October 2019).

136 *Ibid*, p. 42.

137 *Ibid*, pp. 23-38.

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the applicant's phone number," without assessing whether it was indeed downloaded by the applicant or whether the app was used at all, let alone for the purposes of communicating with the members of a terrorist organisation.<sup>138</sup>

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*"The information that I can provide [on the Inquiry Commission] is based on the lack of information. The most significant feature of the Inquiry Commission is the non-transparency of the processes and decision-making mechanisms."*<sup>139</sup>

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Furthermore, it is unclear to civil society actors to date in which order the applications are reviewed by the Inquiry Commission. It does not seem like priority is given to any specific individuals or organisations, such as media and/or human rights organisations, the closure of which adversely affects individuals well beyond their members and/or staff.<sup>140</sup> The applications do not seem to be reviewed in chronological order either, because the applications of many academics who were dismissed from their posts by the first emergency decrees are still pending, more than four years after their dismissals.<sup>141</sup> No decision has been issued yet, to the knowledge of civil society actors, concerning the cases of human rights organisations shut down by emergency decrees.<sup>142</sup>

Judicial proceedings may only be initiated after the Inquiry Commission's decision. Considering the significant delays in processing the applications by the Inquiry Commission and the lack of information as to the order in which the applications are reviewed, this process prevents many affected individuals and organisations from accessing the courts and benefiting from formal judicial proceedings.<sup>143</sup> This also significantly delays their access to the higher courts and to human rights mechanisms, namely the ECtHR, as they are required to exhaust the domestic remedies first.

Once the Inquiry Commission has issued a decision, the process of judicial review may be initiated. The Commission's decisions may be challenged before the Administrative Courts in Ankara. According to the emergency decree establishing the Inquiry Commission,<sup>144</sup> the competent Administrative Courts were appointed by the Council of Judges and Prosecutors, which is under the heavy influence of the political power, and the authority of these Courts is limited to assessing applications for review of the Inquiry Commission's decisions. The concentration of this power in a handful of specially-appointed courts under the indirect control of the Executive raises serious concerns about political influence over them, and may be seen as an attempt to control the possible outcomes of judicial proceedings challenging the emergency rule measures,<sup>145</sup> thus raising serious doubts about their ability to provide effective judicial remedies.

There is no official data regarding the outcomes of the legal proceedings before the Administrative Courts. There are some individual initiatives to reach out to the applicants to the end of assembling a collection of Court decisions, but comprehensive data is not available. Based on the limited information available, it does not appear that the applicants have a high chance of obtaining an effective remedy. The concept of "having a connection or contact with

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138 *Ibid*, pp. 28-29.

139 Online Interview no. 16 in January 2021 with a civil society representative.

140 *Ibid*.

141 *Ibid*.

142 *Ibid*.

143 See, Turkey Human Rights Litigation Support Project, Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission, pp. 38-41 (October 2019).

144 Article 11 of the Emergency Decree no. 685 on the Establishment of the Inquiry Commission (*Olağanüstü Hal İşlemleri İnceleme Komisyonu Kurulması Hakkında Kanun Hükmünde Kararname*) published in the Official Gazette no. 29957, dated January 23, 2017 and entered into force through its publication. The Emergency Decree was integrated into ordinary law, with some amendments, by Law no. 7075 published in the Official Gazette no. 30354 (duplicate) and dated March 8, 2018.

145 Kerem Altıparmak – IHOP, Is The State of Emergency Inquiry Commission, Established By Emergency Decree 685, an Effective Remedy?, p. 17 (February 2017).

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a terrorist organisation" lends itself to a broad and discretionary interpretation by the Courts, even more than the other extremely problematic definitions of terrorism-related crimes in Turkey, such as "membership in a terrorist organisation," and "aiding and abetting a terrorist organisation."<sup>146</sup> It is still unclear how this concept will be interpreted by the Courts in respect to the associations and other organisations shut down by emergency decrees.

The applicants challenging the decisions before the Courts face further limitations in exercising their right to a fair trial, according to our sources.<sup>147</sup> Witnesses cannot be cross-examined or even directly heard before the Administrative Courts. Therefore, even if a determination that an individual or an organisation had a "connection or contact with a terrorist organisation" was based on the testimonies and/or complaint of a single individual, that individual cannot be heard or cross-examined before the Administrative Court when it is assessing if the emergency rule measure was indeed legally justified. Furthermore, thousands of applications have been made by the individuals and organisations affected by the emergency rule measures, and the competent Administrative Courts simply do not have time to carefully review all the cases. For instance, it was reported that in 2020, one of the competent Administrative Courts issued decisions in more than 4,000 cases<sup>148</sup>, which means that it did not even have a full day to review and rule on a single case. According to our sources, a lack of careful assessment is also clearly reflected in the text of the rulings. Indeed, the fact that decisions lack individualised assessments, and are based on statement of general context, facts, and other general information, would, according to the same source, confirm this assumption.

After more than four years since the first round of dismissals and closures, no cases have yet reached the High Administrative Court (*Danıştay*) or the Constitutional Court.<sup>149</sup> The lengthy procedures before the Inquiry Commission as well as the lower Administrative Courts impose a major barrier for the victims to access justice. Affected individuals and organisations wait for months or even years for a judgement from the Inquiry Commission, and then from the lower courts, before they can submit an application to the Constitutional Court and only then, once all domestic remedies have been exhausted, to the ECtHR, where they are more likely to obtain a positive outcome. Information gathered through our sources, and confirmed by data gathered by other INGOs, show that the lengthy procedures and legal costs,<sup>150</sup> coupled with the perceived lack of independence of these mechanisms, deter many affected individuals and organisations from exhausting all the domestic legal remedies,<sup>151</sup> *de facto* depriving them of their right to an effective remedy for their rights' violations. Many affected individuals and organisations thus abandon the legal process early on and do not exhaust the available legal remedies.

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146 Online Interview no. 16 in January 2021 with a civil society representative.

147 *Ibid.*

148 The relevant Court's decision with a decision no. greater than 4,000 available at: [https://www.fidh.org/IMG/pdf/court\\_decision\\_masked.pdf](https://www.fidh.org/IMG/pdf/court_decision_masked.pdf)

149 Online Interview no. 16 in January 2021 with a civil society representative.

150 See, Amnesty International, Turkey: Purged Beyond Return? No Remedy for Turkey's Dismissed Public Sector Workers EUR 44/9210/2018, p. 15 (October 25, 2018). Available at: <https://www.amnesty.org/download/Documents/EUR4492102018ENGLISH.PDF>. According to the testimonies in the Amnesty International report, some applicants were not able to afford the attorney fees to be represented by a lawyer before the Administrative Courts, and had to use templates available on the internet instead. As the legal procedure continues, legal fees disadvantage many applicants who are already deprived of financial security due to emergency measures like dismissals.

151 Online Interview no. 16 in January 2021 with a civil society representative.



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### Box #5 – Challenges Faced by the Women’s Rights Organisations Shut Down by Emergency Decrees

Women’s rights defenders in the South-East of Turkey were directly targeted and adversely affected by the emergency rule. During that period, at least 11 women’s rights organisations, most of which were based in the region, were closed down by emergency decrees on the basis of alleged ties with terrorist organisations, and without any concrete evidence.<sup>152</sup> Civil society actors reported that despite their repeated attempts to understand how their activities or members could be considered as having ties with terrorist organisations, they were neither provided with a satisfying response nor with any concrete evidence that would support these allegations.<sup>153</sup>

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*“We have lost substantial know-how and our history.”<sup>154</sup>*

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Following the closure, their assets, including bank accounts, real property, furniture, electronics, and even their collections of books and feminist journals, were seized.<sup>155</sup> This also meant losing their institutional history as well as their confidential records concerning previous activities and survivors of gender-based violence who sought their support.<sup>156</sup> They also lost their connections with the women they served, as their phones and computers were seized.<sup>157</sup> Aside from being a clear violation of the freedom of association, the confiscation of assets and records also constitutes a violation of the rights to privacy and to the protection of personal data of the survivors of gender-based violence. The whereabouts of the seized materials are still unknown to civil society actors.<sup>158</sup> A civil society actor reported that when they were given access to their former office, the premises appeared to have been looted, with even the picture frames having been taken, and the pictures thrown on the floor.<sup>159</sup> Many human rights associations’ applications are still pending before the Inquiry Commission regarding their closure and the related confiscation of their assets.<sup>160</sup>

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152 Filiz Kerestecioğlu, Türkiye’de Kadın Hakları İhlalleri, para. 10 (September 2017). Available at: <https://www.hdp.org.tr/Images/UserFiles/Documents/Editor/HDP%20-%20T%C3%BCrkiye’de%20Kad%C4%B1n%20Haklar%C4%B1%20%C4%B0hlalleri%20Raporu.pdf>; Ekmek ve Gül, OHAL’de kadınlık halleri: Her halde direniş... (July 10, 2017). Available at: <https://ekmekvegul.net/guncel-dosya/ohalde-kadinlik-halleri-her-halde-direnis>.

153 Online Interview no. 15 in November 2020 with a civil society representative.

154 *Ibid.*

155 *Ibid.*

156 Istanbul Convention Monitoring Platform Turkey, Shadow NGO Report on Turkey’s First Report, p. 12 (September 2017). Available at: <https://rm.coe.int/turkey-shadow-report-2/16807441a1>.

157 Online Interview no. 15 in November 2020 with a civil society representative.

158 Online Interview no. 6 in May 2020 with a civil society representative.

159 Online Interview no. 15 in November 2020 with a civil society representative.

160 *Ibid.*

In addition to the closure of civil society organisations, tens of women's centres and shelters operating under the municipalities held by Peoples's Democratic Party (*Halkların Demokratik Partisi – HDP*) were also closed down by the Government-appointed trustees, replacing the elected and subsequently overthrown HDP mayors.<sup>161</sup> This was perceived by the women's rights defenders as an explicit attempt to undermine women's rights by the central Government.<sup>162</sup> As a result of reduced capacity due to the closures, women's rights defenders in the region faced severe challenges in providing the most needed services to women, and many women were left without formal assistance in cases of gender-based violence.<sup>163</sup> Since the closures, women in major South-Eastern cities have had to rely on the shelters being operated by the central administration, which do not have enough capacity for all survivors and to which particularly vulnerable women, such as refugee and migrant women, usually don't have priority access.

According to our sources, despite those challenges, many women in the region did not give up on their work and still continue to carry it out under newly established organisations, with or without legal personality, which were formed following the closure of their former organisations.<sup>164</sup> However, many women's rights defenders still face immense challenges, including criminalisation and judicial harassment, based on terrorism-related charges and their participation in the activities of the closed-down organisations,<sup>165</sup> which significantly hinder their capacity to carry out their work, and also affect their resilience and damage their reputations. Rosa Women's Association is one such new organisation, along with the Free Women's Platform (*Tevgera Jinên Azad – TJA*), both of which were established after the closure of women's rights organisations in the region and currently operate in the South-East. Their members and executives have been continuously subjected to judicial harassment in the past few years, and some members still remain behind bars pending trial.<sup>166</sup> On the other hand, women's rights defenders who continue their work in a personal capacity face additional challenges due to a lack of adequate institutional support. A civil society representative described those challenges in the following words: *"During the pandemic, a women who survived rape had to hide an abuse for four months at home. I couldn't sleep for these four months. In the past, before the closure of the association, we were sharing this responsibility, but now I have to shoulder the burden on my own. It ties my hands."*<sup>167</sup>

161 Istanbul Convention Monitoring Platform Turkey, Shadow NGO Report on Turkey's First Report, p. 12, 19 (September 2017). Also see, Ekmek ve Gül, Diyarbakır, Van ve Mardin Belediyelerinde kadın çalışmaları rafa kalktı (August 25, 2019). Available at: <https://ekmekvegul.net/gundem/diyarbakir-van-ve-mardin-belediyelerinde-kadin-calismalari-rafa-kalkti>; Gazete Karınca, Kayyumların ilk hedefi kadın kurumları: İşte kapatılan 52 kadın merkezi (March 2, 2017). Available at: <https://gazetekarınca.com/2017/03/kayyumların-ilk-hedefi-kadın-kurumları-iste-kapatılan-52-kadın-merkezi>.

162 Online Interview no. 6 in May 2020 with a civil society representative.

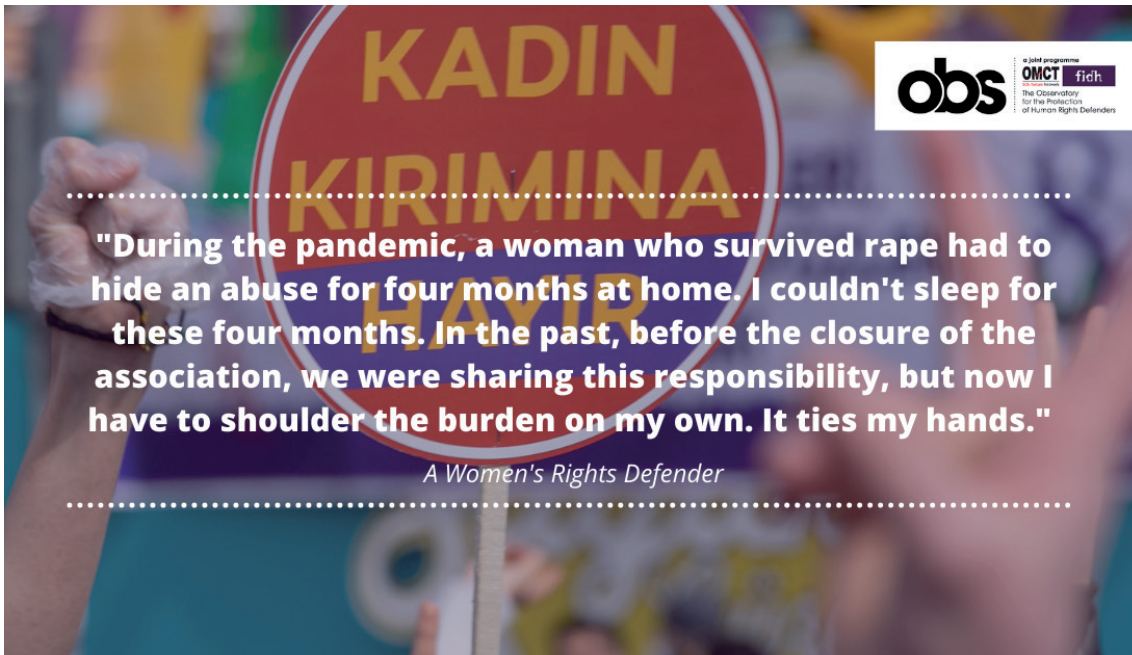
163 For more information, see, Ekmek ve Gül, OHAL'de kadınlık halleri: Her halde direniş... (July 10, 2017).

164 Online Interview no. 6 in May 2020 with a civil society representative.

165 *Ibid.*

166 For more information please see, the Observatory, Urgent Appeal on Turkey: Arbitrary detention of WHRDs and judicial harassment of Rosa Women's Association, TUR 005 / 0520 / OBS 058 (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, Urgent Appeal on Turkey: Multiple arbitrary detentions in Diyarbakır, TUR 007 / 0620 / OBS 073 (June 30, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-multiple-arbitrary-detentions-in-diyarbakir>; the Observatory, Urgent Appeal on Turkey: Arbitrary detention and judicial harassment of several women's rights defenders in Diyarbakır, TUR 009 / 0720 / OBS 085 (July 24, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-detention-and-judicial-harassment-of-several-women-s>.

167 Online Interview no. 15 in November 2020 with a civil society representative.



**"During the pandemic, a woman who survived rape had to hide an abuse for four months at home. I couldn't sleep for these four months. In the past, before the closure of the association, we were sharing this responsibility, but now I have to shoulder the burden on my own. It ties my hands."**

*A Women's Rights Defender*

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The harassment of civil society actors did not end with the closure of associations by emergency decrees, and their former members experienced various forms of harassment, including at the judicial level, based on their past membership in those associations. Our sources reported that a list of former members of those associations were distributed among public institutions, and that they were labelled as criminals and refused employment opportunities despite there being no court order confirming either the association's or the members' involvement in any criminal activities.<sup>168</sup> Furthermore, particularly in the South-East of the country, membership and/or involvement in those organisations, such as Sarmaşık Association for Sustainable Development and Struggle against Poverty (*Sarmaşık Yoksullukla Mücadele ve Sürdürülebilir Kalkınma Derneği*), was included as incriminating evidence in the criminal cases against many Kurdish lawyers, civil society actors, and politicians.<sup>169</sup> This phenomenon is a clear violation of the freedom of association, and the violation is even more severe considering that the closure of associations was not based on a judicial decision but rather on the emergency decrees issued by the Executive, the lawfulness of which is questionable in the first place, and has not yet been examined by an independent court of law in the course of a regular judicial proceeding. Additionally, this practice only leads to further abuse. In the first instance, the closure of an association based on unlawful emergency decrees is used as evidence for the criminal conviction of its members, and then the lawfulness of these very same emergency measures – including the ones ordering the closure of the associations – is decided by the Inquiry Commission based on factors including the criminal cases opened against those associations' members on the basis of the emergency decrees in question.

No cases related to the closed organisations have yet reached the Constitutional Court, but the jurisprudence of the Court in similar cases may provide guidance on the possible outcomes in those cases. In its recent rulings, the Court has emphasised that using participation in activities of an association as incriminating evidence to establish criminal charges, without further analysis, may have a chilling effect on the free exercise of fundamental rights and

<sup>168</sup> *Ibid.*

<sup>169</sup> For example, see, Human Rights Watch, Turkey: Kurdish Mayors' Removal Violates Voters' Rights (February 7, 2020). Available at: <https://www.hrw.org/news/2020/02/07/turkey-kurdish-mayors-removal-violates-voters-rights>.

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thus violates the freedom of association.<sup>170</sup> However, when looking at the Court's current jurisprudence, the violation of the freedom of association seems only to be recognised in cases of outright violation,<sup>171</sup> i.e. when the criminal charges are based solely on membership in an association, without further analysis of how the membership relates to the commitment of the alleged crime, and in the absence of other evidence. Ultimately, the Court does not seem to have established a consistent jurisprudence yet in cases where the exercise of the freedom of association is used as supporting evidence in criminal cases, where other incriminating evidence exists, and especially where the association in question is allegedly connected to the PKK or FETO/PDY.

## **b. Dismissals in the Public Sector and the Profiling of Civil Society Actors**

Another emergency rule measure, which indirectly violated the freedom of association, was the mass dismissal of civil servants, for the alleged purpose of discharging from public employment those who were allegedly connected to FETO/PDY. Indeed, during the emergency rule, approximately 135,000 civil servants, including HRDs, were dismissed and banned for life from holding public employment by emergency decrees, for their alleged ties with terrorist organisations.<sup>172</sup> The mass dismissals were based on shaky and generic grounds, such as the fight against terrorism, and many HRDs were reported to be targeted for their membership in or connection with civil society organisations and trade unions that are critical of the Government.

The practice of dismissals still continues, by virtue of the special provisions of Law no. 7145, entered into force in July 2018,<sup>173</sup> which ensured the integration of many emergency rule provisions into ordinary rule.<sup>174</sup> Law no. 7145 enables the dismissal of civil servants by the relevant administrative authorities, without a court decision, on the basis of their alleged "membership, affiliation, connection or contact" with terrorist organisations, for an additional period of three years as of the publication of the Law no. 7145, that is until July 2021.

The legacy of dismissals continues to haunt the public sector through another mechanism, the system of background investigations. Accordingly, all persons due to enter public employment are subjected to a background investigation prior to their appointment. The scope of this legal requirement, which previously existed only for those entering the security forces and other public sector positions requiring a security clearance, was broadened to include all civil servants through an emergency decree adopted in October 2016,<sup>175</sup> and was subsequently integrated into ordinary law in March 2018.<sup>176</sup> This provision was overturned

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170 For example, see, Constitutional Court (General Assembly) decision dated May 22, 2019, Metin Birdal, application no. 2014/15440. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/15440>; Constitutional Court decision dated June 3, 2020, Hakan Yılmazöz, application no. 2017/37725. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/37725>.

171 In more recent examples and high-profile complaints relating to the prolonged arbitrary detention of the applicant, the Court did not even discuss the potential violation of the freedom of association – and also denied other claims of violations – although the detention was supported by "incriminating evidence" that included participation in the activities of certain legal associations. For instance, see, the Constitutional Court's decision dated June 9, 2020, Selahattin Demirtaş (3), application no. 2017/38610. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/38610>.

172 IHD, 2019 Human Rights Report, p. 32 (May 2020). Available at: <https://ihd.org.tr/en/wp-content/uploads/2020/05/I%CC%87HD-2019-VIOLATIONS-REPORT.pdf>.

173 Law no. 7145 on the Amendment of Certain Laws and Decree Laws (*Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun*) published in the Official Gazette no. 30495, dated July 31, 2018, and entered into force on the date of its publication.

174 For more information on how the Law no. 7145 extended the application of emergency rule practices to ordinary rule, see, Human Rights Association (*IHD – İnsan Hakları Derneği*), IHD's Views Regarding Law no. 7145 Regulating Permanent State of Emergency (August 1, 2018). Available at: <https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency>.

175 Article 74 of the Emergency Decree no. 676 published in the Official Gazette no. 29872, dated October 29, 2016 and entered into force through publication.

176 Law no. 7070 published in the Official Gazette no. 30354 (duplicate), dated March 8, 2018 and entered into force through publication.

by the Constitutional Court twice, first in July 2019<sup>177</sup> and then in April 2020,<sup>178</sup> both for attributing an unduly large margin of appreciation to the authorities in the appointment procedure, and for violating the right to privacy.

A proposal introducing a revised system of background investigations was adopted by the National Assembly on April 7, 2021.<sup>179</sup> This proposal has been criticised by civil society organisations and opposition figures for including provisions that are too vague and that still leave too much discretion to the authorities in controlling the appointment process.<sup>180</sup> Under the revised system, two different types of background investigations are foreseen: an “archive investigation” for all persons entering public employment, and a “security investigation” for those entering the security forces, intelligence services and other public sector positions requiring a security clearance (Article 3), as well as teachers.<sup>181</sup> The “archive investigation” includes any pending criminal investigations and prosecutions against the person in question, among other considerations (Article 4). In a context where most civil society actors and HRDs face criminal investigations and prosecutions for their human rights activities and even for merely expressing dissent, these can be invoked as valid grounds to refuse granting clearance, and therefore access to public employment, to civil society actors.

These worry that background investigations may continue to be used as a tool to keep those who are critical of the Government out of public office, which violates the principles of equal treatment and non-discrimination in employment, as well as the right to freedom of association of those who are banned from public employment based on their affiliation with legal associations. Civil society actors and HRDs also expressed their concerns about their human rights activities having been used in the past against family members who sought to enter the public sector. This practice was reported to have a serious deterrent effect on civil society actors and HRDs, since it had the potential to directly affect not only them but also their family members.<sup>182</sup> Whether it is HRDs who lose their jobs in the public sector, or family members who are banned from holding public office due to the relevant HRD’s human rights activities, this practice has adverse social and financial impacts on the entire family. Indeed, punishment of family members for the human rights activities of civil society actors and HRDs violates basic rights such as the principle of individual criminal responsibility, the presumption of innocence, the right not to be discriminated against in employment, and the freedom of association of the civil society actors and HRDs, including their right to defend human rights. Under the recently adopted proposal, in principle, investigation of family members is no longer permitted.

These concerns regarding profiling are enhanced due to the recent amendments to the Law on Associations.<sup>183</sup> According to the amendment to Article 23, which entered into force on March 26, 2020, associations are now required to collect the personal information of all

177 Constitutional Court decision in the case no. 2018/73 and decision no. 2019/65, published in the Official Gazette no. 30963 and dated November 29, 2019.

178 Constitutional Court decision in the case no. 2018/163 and decision no. 2020/13, published in the Official Gazette no. 31112 and dated April 28, 2020.

179 See, Law no. 2/2972 on Security Investigation and Archive Research (*Güvenlik Soruşturması ve Arşiv Araştırması Kanunu Teklifi*). The Law was adopted by the National Assembly on April 7, 2021 but has not yet been published in the Official Gazette at the time of writing..

180 See, Hak İnisyatifi, *Güvenlik Soruşturması ve Arşiv Araştırması Uygulaması Kaynaklı Hak İhlalleri İnceleme ve Araştırma Raporu* (June 21, 2020). Available at: <https://www.sivilsayfalar.org/wp-content/uploads/2020/06/gu%CC%88venlik-sorus%CC%A7turmas%C4%B1-raporu-v5.pdf>; IHOP, *Güvenlik Soruşturması ve Arşiv Araştırması Kanun Teklifi Çevrim İçi Panel Sonuç Bildirgesi* (July 6, 2020). Available at: <https://ihop.org.tr/guvenlik-sorusturmasi-ve-arsiv-arastirmasi-kanun-teklifi-cevrim-ici-paneli-sonuc-bildirgesi>; IHOP, *Güvenlik Soruşturması ve Arşiv Araştırması Kanun Teklifi Reddedilmelidir!* (April 6, 2021). Available at: <https://ihop.org.tr/guvenlik-sorusturmasi-ve-arsiv-arastirmasi-kanun-teklifi-reddedilmelidir/>.

181 During the discussions at the National Assembly, teachers were also added to the list of public employees subjected to security investigation. The scope of the security investigation is much broader and vague comparing to the archive investigation, and it also includes one’s alleged “connection or contact with a terrorist organisation.” See, DW, *Öğretmenlere “güvenlik soruşturması” kısıacı* (April 7, 2021). Available at: <https://www.dw.com/tr/%C3%B6%C4%9Fretmenlere-g%C3%BCvenlik-soru%C5%9Fturmas%C4%B1-k%C4%B1skac%C4%B1/a-57126026>

182 Online Interview no. 1 in May 2020 with a civil society representative.

183 Law no. 5253 on Associations (*Dernekler Kanunu*) published in the Official Gazette no. 25649, dated 23 November, 2004, and entered into force through its publication.

members, and to share their identities with the authorities within 45 days following the start and/or end of membership.<sup>184</sup> Those who do not comply with the provisions are subjected to an administrative fine of TRY 500 (approximately EUR 50). The amendments were found problematic by the Council of Europe's Expert Council on NGO Law both on procedural and substantive grounds,<sup>185</sup> and civil society actors also expressed their concerns that the new provision has a serious potential to be used by the authorities to blacklist and target the members of critical associations.<sup>186</sup>

## E. Structural Challenges: Access to Funding and Resources

In accordance with Turkish law, civil society organisations are free to receive in kind as well as cash donations and assistance from corporations, individuals, and other sources to pursue the objectives provided in their bylaws.<sup>187</sup> Despite this relatively permissive legislative environment, in practice civil society organisations face challenges in access to funding and in maintaining their financial stability.

Public funding sources are rather limited. Except for the EU funds administered by the Central Finance and Contracts Unit<sup>188</sup> (*Merkezi Finans ve İhale Birimi*), there is no clear and comprehensive regulation concerning the distribution of public funds to civil society organisations.<sup>189</sup> Ministries and municipalities may set aside a budget to be allocated to civil society organisations at their discretion, and these funds are mainly distributed in the form of project partnerships rather than through direct and systematic grants.<sup>190</sup> However, civil society actors reported that even when such opportunities exist, the funds are usually allocated to those organisations that maintain a close relationship with the Government.<sup>191</sup> For this reason, in the current picture, public funding is not a viable option for most civil society organisations.

When it comes to financial support by the general public, fund-raising campaigns are strictly regulated in Turkey. In accordance with Article 6 of the Law on Aid Collection, the authorities' prior permission is required for any campaign actively seeking funds from the public. Furthermore, recent amendments enacted in December 2020<sup>192</sup> introduced further

184 Ministry of Interior General Directorate of Civil Society Relations, Announcement on the Amendments to the Law on Assemblies (*Çok Önemli Duyuru: 5253 sayılı Dernekler Kanununda Bazı Değişiklikler Yapıldı*) (March 26, 2020). Available at: <https://siviltoplum.gov.tr/ankara/cok-onemli-duyuru-5253-sayili-dernekler-kanununda-bazi-degisiklikler-yapildi>.

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

186 Online Interview no. 16 in January 2021 with a civil society representative.

187 Balkan Civil Society Development Partner & Third Sector Foundation of Turkey (Türkiye Üçüncü Sektör Vakfı – "TÜSEV"), Monitoring Matrix on Enabling Environment for Civil Society Development – TURKEY Country Report - "The Civil Society Environment in Turkey 2017 Report", p. 12 (June 2018). Available at: [https://www.tusev.org.tr/userfiles/images/Monitoring\\_Matrix\\_The\\_Civil\\_Society\\_Environment\\_in\\_Turkey\\_2017\\_Report.pdf](https://www.tusev.org.tr/userfiles/images/Monitoring_Matrix_The_Civil_Society_Environment_in_Turkey_2017_Report.pdf).

188 The Unit, as the implementing agency, is responsible for the overall budgeting, tendering, contracting, payments, accounting, and financial reporting aspects of all procurement of services, supplies, works, and grants in the context of EU funded programmes. For more information, see: <http://www.cfcu.gov.tr/about>.

189 Balkan Civil Society Development Partner & TÜSEV, The Civil Society Environment in Turkey 2017 Report, p. 15 (June 2018).

190 *Ibid*, pp. 15-16.

191 For instance, according to a report shared with the public by an opposition politician, during the period of AKP rule of the Istanbul Municipality, an overwhelming majority of the financial and non-financial contributions by the Municipality was allocated to pro-Government organisations, some of which were founded by the relatives of high-level Government officials. See, DW, İBB eski yönetimi Erdoğan'a yakın vakıflara ne kadar para yardımı yaptı? (April 19, 2019). Available at: <https://www.dw.com/tr/ibb-eski-y%C3%B6netimi-erdo%C4%9Fana-yak%C4%B1n-vak%C4%B1flara-ne-kadar-para-yard%C4%B1m%C4%B1-yapt%C4%B1/a-48397744>. For the report, see, Istanbul Metropolitan Municipality, STK – Okul – Yurt Faaliyet Raporu 2018. Available at: <https://www.dw.com/downloads/48397760/ibbfaaliyet-raporu.pdf>.

192 Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction (*Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun*) published in the Official Gazette no. 31351, dated December 31, 2020 (5<sup>th</sup> edition) and entered into force through its publication.

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limitations to organising fund-raising campaigns through online platforms, and increased the monetary fines for unauthorised campaigns, which may run as high as TRY 200,000 (approximately EUR 22,000). And on top of a fine, any funds and assets raised through an unauthorised campaign are confiscated and transferred to the State treasury. In addition to the restrictive laws, moreover, donations by the general public are less common due to the hostility towards civil society activities and the profiling of civil society actors, which deter individual donors from supporting NGO work. Especially as regards organisations working on sensitive issues and facing stigmatisation on a daily basis, including those working on the rights violations in the South-East and on LGBTI+ rights, citizens fear that they might also be profiled and harassed as a result of their donation.<sup>193</sup>

For the above-stated reasons, many civil society organisations in Turkey are highly dependent on foreign funding, while many others choose, for practical and ideological reasons, to rely on voluntary work and contributions. There is nothing in the relevant legislation that prohibits civil society organisations from receiving foreign funding. In accordance with Article 21 of the Law on Associations and Article 25 of the Law on Foundations, they are simply required to inform the authorities immediately after the receipt of any foreign funding. Yet foreign aid is not clearly defined under the relevant legislation, and organisations are under the obligation to notify the authorities regardless of the amount that they receive, which creates an administrative burden on the organisations.<sup>194</sup>

In recent years however, and despite the relatively permissive legislative framework, receiving foreign funding has become increasingly stigmatised, and organisations receiving funds from Western donors have been targeted in pro-Government media and by Government officials. Most significantly, all organisations having received funds from the Open Society Foundations ("OSF") were subjected to a tax audit. According to the testimonies of civil society actors, in the context of this audit they were questioned about their projects, the use of the funds, and whether they had provided any services to OSF, answers to which do not fall within the authority of the tax administration.<sup>195</sup> Furthermore, the organisations that had received funds from OSF were also mentioned, in such a way as to suggest criminal links, in the indictment<sup>196</sup> in the Gezi Park case, in which prominent civil society actors and HRDs were accused of financing and organising the mass Gezi Park protests in 2013, allegedly in an attempt to overthrow the Government. This has raised serious concerns among those organisations about being targeted by further criminal investigations by virtue of their funding.<sup>197</sup> The legal persecution of Osman Kavala, one of the founders of OSF in Turkey, as well as his severe stigmatisation on pro-Government media and by public officials, put a spotlight on OSF. As a result, OSF decided to cease its activities in Turkey in November 2018.<sup>198</sup>

OSF is not the only foreign funder that has been stigmatised on pro-Government media and by public officials. For instance, environmental rights defenders faced a smear campaign by a nationalist-leftist group on the grounds that one of the organisations involved in an environmental campaign is funded by the EU, and is thus "unpatriotic."<sup>199</sup> Similarly, LGBTI+ rights organisations face stigmatisation on pro-Government media on a regular basis for receiving funds from international donors, which in the media's opinion testifies to their collaboration with Western countries in their attempts to "spread LGBTI+ propaganda"

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193 Online Interview no. 5 in May 2020 with a civil society representative; Online Interview no. 6 in May 2020 with a civil society representative.

194 Balkan Civil Society Development Partner & TÜSEV, *The Civil Society Environment in Turkey 2017 Report*, p. 12 (June 2018).

195 Online Interview no. 14 in November 2020 with a civil society representative.

196 See, Indictment no. 2019/1811 for the case no. 2019/9183, pp. 119-123. Available at: <https://t24.com.tr/foto-haber/iste-16-ay-sonra-hazirlanan-gezi-parki-kavala-iddianamesinin-tam-metni/7346/120>.

197 Online Interview no. 14 in November 2020 with a civil society representative.

198 Open Society Foundations, *The Open Society Foundation in Turkey Ceases Its Operations* (November 26, 2018). Available at: <https://www.opensocietyfoundations.org/newsroom/open-society-foundation-turkey-ceases-its-operations>.

199 TGB, *Kaz Dağları'nda At Gözlüğüyle Dolaşanlar*, (August 12, 2019). Available at: <https://tgb.gen.tr/serbest-kursu/kaz-daglari-nda-at-gozluguyle-dolasanlar-28870>.

and “ruin the Turkish family.”<sup>200</sup> Similarly, women’s rights organisations with a feminist perspective were also targeted by the same actors for their funding sources. Feminism has also been labelled as “Western propaganda,” and these organisations were accused of being insufficiently “domestic and national” for having received funding from foreign embassies.<sup>201</sup>

International funding, especially the funds distributed by the EU under the Instrument for Pre-Accession Assistance framework, remains the main source of funding that civil society actors in Turkey benefit from. Stigmatisation for receiving funds from those actors threatens the financial, and, indeed, the operational sustainability of many civil society organisations. These organisations reported having to think twice before they collaborate with international donors, over fears of being targeted as a result. In addition, the lack of viable and comparable alternative funding options causes a relationship of near-dependence between civil society actors and international donors, which are overwhelmingly comprised of Western donors, which generates a power imbalance between funders and beneficiaries.

What makes this relationship even more complicated is that civil society actors believe that many donors fail to fully grasp the situation in Turkey, including the increasingly shrinking civic space and the limited capacity of their organisations to achieve a tangible impact.<sup>202</sup> As a result, the priorities of international donors do not always align with the priorities of civil society in Turkey.<sup>203</sup> In some cases, this forces the latter to change their priorities to meet the expectations of the donors and/or to access funding opportunities.<sup>204</sup>

Furthermore, the scarcity of core funding, along with the short-term and project-based nature of many funding opportunities, adversely affect the institutionalisation and long-term sustainability of civil society organisations in Turkey,<sup>205</sup> while further tying them to the donors’ agendas and priorities. Civil society organisations especially face challenges in keeping their qualified work force attached to their organisations, since they are unable to provide long-term contracts. A civil society actor reported that they had to let their staff members go at the end of each project’s term, generally around one to three years, exactly when they started developing expertise and familiarity with the organisation.<sup>206</sup> This also means, for the civil society organisations, wasting the investments they have made in building the capacity and expertise of those staff members, and losing the institutional memory that these people built within the organisation.<sup>207</sup>

The scarcity of long-term core funding options force civil society actors to rely on their own resources and/or on volunteer work. Some actors are more resilient in the face of financial difficulties thanks to their own resources and their work outside civil society. However, while volunteer work can sustain an organisation in some circumstances, especially for those focusing on activism on the ground with few expenses involved, in many cases it is not a sustainable option in the long run. Many staff members juggle between their income-generating activities and their voluntary civil society work, which may be overwhelming over a long period of time, and not only negatively impact NGO work, but also affect staff well-being. Furthermore, the ongoing economic recession in Turkey is another factor that further deepens the financial concerns of civil society actors. A civil society actor highlighted the challenge that many actors face in maintaining focus on human rights work while also going through serious economic difficulties.<sup>208</sup> For those reasons, our sources pointed to an urgent need for reliable and long-term core funding options, as well as flexible support grants to HRDs, to actively support civil society and to ensure that the donors are not contributing to

200 KAOS GL, Akit, LGBTI+ toplumu ve kurumlarına nefret saçıyor! (June 4, 2020). Available at: <https://kaosgl.org/haber/akit-lgbti-toplumu-ve-kurumlarina-nefret-saciyor>.

201 Online Interview no. 4 in May 2020 with a civil society representative.

202 Online Interview no. 3 in May 2020 with a civil society representative.

203 Online Interview no. 10 in May 2020 with a civil society representative.

204 Online Interview no. 3 in May 2020 with a civil society representative; Online Interview no. 10 in May 2020 with a civil society representative.

205 Online Interview no. 10 in May 2020 with a civil society representative.

206 Online Interview no. 5 in May 2020 with a civil society representative.

207 *Ibid.*

208 Online Interview no. 10 in May 2020 with a civil society representative.



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entrenching the existing vulnerabilities of the civil society in Turkey, but are rather helping to address them.

Another issue faced by civil society organisations and HRDs when seeking funding is the language barrier. Most of the time, the English language is required to access information and to submit an application to calls opened by international donors. While larger-scale organisations have the capacity to prepare such applications and to access information in other languages, this is a significant barrier for smaller-sized and grassroots organisations.<sup>209</sup> This also applies to various other non-financial support mechanisms provided to HRDs. A civil society actor pointed out the negative effects of the practices of some international organisations in the following words: *"There are very good international programmes for HRDs; but speaking English is a must. Very few individuals in Turkey can speak and give a briefing in English. Then the organisations<sup>210</sup> lament that it is always the same people applying to those programmes. If they [the organisations] are concerned about this, they should take a look at [the shortcomings of] their own programme."*<sup>211</sup>

Many civil society actors also lamented the overcomplicated and burdensome financial and administrative requirements imposed by some donors in connection with funding provided to civil society organisations, which in turn has an impact on their ability to carry out activities and ensure their quality.<sup>212</sup> They also pointed out a misconception about the capacity of civil society organisations by the donors: many civil society organisations lack the capacity to fulfil the reporting requirements, due to limited expertise in the area and limited human resources, and would require more support and flexibility in implementing the programmes and ensuring compliance with reporting obligations.

While our sources acknowledged the added value of certain recent and more flexible mechanisms in terms of financial reporting, eligibility, and language, they still feel that the way in which most funding mechanisms are conceived places yet another burden on civil society actors working with limited capacity and in challenging circumstances. They expressed hope that more efforts can be made by international donors to establish more supportive and flexible frameworks, and to ensure outreach to diverse groups, including women, LGBTI+ individuals, grassroots groups, and those who do not speak English.

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209 Online Interview no. 5 in May 2020 with a civil society representative.

210 The civil society representative refers to the organisations offering funding opportunities as well as relocation programmes.

211 Online Interview no. 10 in May 2020 with a civil society representative.

212 Online Interview no. 14 in November 2020 with a civil society representative.

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## F. Restrictions to Public Participation and Counter Human Rights Narratives

### a. Closing Space for Dialogue



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"The State institutions have been completely closed to civil society for the last five to six years. Our opinion is not taken into account and we cannot reach out to the authorities. There is less space where we can express ourselves."<sup>213</sup>

In recent years, civil society organisations have been pushed out of decision- and policy-making spaces, and the opportunities for dialogue between them and the State administration has significantly shrunk. This lack of engagement is not surprising, especially in an environment where civil society actors are marginalised on a daily basis, and labelled as illegitimate actors who are allegedly working against the "national interests."

The legislation does not provide comprehensive rules regarding the right to public participation.<sup>214</sup> Even in cases where participation by civil society organisations in the formulation of public policy is foreseen in the relevant legislation, the extent of any collaboration between civil society and the authorities is limited by the fact that the law is vague, and no specific procedures are provided to regulate civic engagement.<sup>215</sup> Hence, the participation of civil society organisations in decision-making processes that affect them is left, aside from a few exceptions, to the authorities' discretion.<sup>216</sup> Furthermore, the legislation also leaves a great deal of discretion to the authorities when it comes to determining which civil society actors are to be consulted, and to what extent to take their contributions into account throughout the decision-making process.<sup>217</sup>

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213 Online Interview no. 1 in May 2020 with a civil society representative.

214 STGM & TÜSEV & YADA, *Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler*, pp. 105-122 (May 2015).

215 *Ibid.*, pp. 107-109. For instance, in accordance with Article 6 of the Regulation on the Procedures and Procedures of Legislative-Making (*Mevzuat Hazırlama Usul ve Esasları Hakkında Yönetmelik*) published in the Official Gazette no. 26083 and dated February 17, 2016, in the evaluation of a draft legislation, public entities shall "make use of the opinion of local administrations, universities, trade unions, professional associations and civil society organisations." The wording of this provision is not clear, and it does not compel the public authorities to conduct meaningful consultations with civil society organisations.

216 *Ibid.*, p. 118.

217 *Ibid.*, pp. 110-111.

Our sources reported reduced opportunities for dialogue and participation in decision-making processes compared to previous years. In the past, Ministries actively sought out the opinion of civil society organisations. In the Grand National Assembly too, civil society was very active in the law-making process. There were joint initiatives to enhance civil society participation in the activities of the Assembly, and guidelines on civil society participation were jointly prepared.<sup>218</sup> However, in October 2018, the rules of procedure of the Assembly were amended in such a way as to abolish any reference to civil society participation in the Assembly's activities.<sup>219</sup> While the amendments do not explicitly ban civil society participation, they reflect the changing atmosphere and legitimise civil society's *de facto* exclusion from the decision-making process. In addition to those changes in the internal procedures, in practice, law-making processes are now often accelerated by the ruling party, thus bypassing ordinary channels for democratic decision-making and meaningful stakeholder participation, including both civil society and the opposition.<sup>220</sup>

Indeed, our sources reported that, in recent years, not only has their opinion not been actively sought by the State administration, but their requests for meetings have been ignored, with the exception of some levels of the Ministry of Justice.<sup>221</sup> As a consequence, civil society actors report having to actively reach out to the authorities to make sure that they are invited to join significant consultative processes, and even then sometimes the authorities refuse to invite them, using the excuse that they have already invited a sufficient number of civil society organisations.<sup>222</sup> In some cases, they are invited at the last minute, which makes their participation difficult or impossible, especially for meetings taking place outside their region.<sup>223</sup>

Although civil society actors report being sometimes invited to consultations related to the elaboration of strategies and/or international documents, these consultations are reportedly perceived by civil society actors as a box-ticking exercise, by which the Government intends to create an impression of a participatory and inclusive process, especially before international bodies.<sup>224</sup> Even when they are consulted within the scope of such processes, they feel that their input is not at all taken into account.<sup>225</sup> This impression is further reinforced by the negative attitude of the authorities during some meetings.<sup>226</sup> As a result, civil society actors do not feel that their input is being taken into account, or that their activities have a genuine potential to influence the authorities' policies and practices.

218 Online Interview no. 10 in May 2020 with a civil society representative.

219 See, Mecliste, İçtüzük değişikliği Mecliste kabul edildi (October 9, 2018). Available at: <https://mecliste.org/guncelleme/ictuzuk-degisikligi-bugun-mecliste-gorusulecek>; also see, Sivil Sayfalar, Vekiller "Meclise STK giremez!" Pankartı da Tutacaklar Mı? (October 11, 2018). Available at: <https://www.sivilsayfalar.org/2018/10/11/vekiller-meclise-stk-giremez-pankarti-da-tutacaklar-mi>.

220 For instance, the controversial Bill on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction was submitted to the Presidency of the Assembly on December 16, 2020 and was adopted by the Assembly on December 27, 2020, without providing any opportunity for a meaningful dialogue.

221 For instance, IHD reported not having met with the Grand National Assembly's Human Rights Assessment Commission since its re-composition in 2018, following the general elections, although IHD had sent two requests for a meeting to the attention of the chair of the Commission.

222 Online Interview no. 10 in May 2020 with a civil society representative.

223 Online Interview no. 4 in May 2020 with a civil society representative.

224 Online Interview no. 10 in May 2020 with a civil society representative.

225 Online Interview no. 7 in May 2020 with a civil society representative.

226 Online Interview no. 10 in May 2020 with a civil society representative.

## Box #6 – Human Rights Action Plan

A new Human Rights Action Plan has been on the agenda of the President since he was elected in 2018, but the release of the plan has been repeatedly postponed.<sup>227</sup> Meetings were organised in February 2019 by the Ministry of Justice, in which civil society actors also participated. While no further actions were taken, and no updates were shared as to the outcome of the first round of consultations, civil society actors received another invitation for meetings to be organised in December 2019. Some civil society organisations boycotted the process, as their repeated suggestions were not taken into account, and they had not seen any genuine interest from the Government actors.<sup>228</sup> Indeed, although many civil society actors submitted their suggestions during and after the meetings in December 2019,<sup>229</sup> no significant steps were taken, and the human rights situation in the country continued to deteriorate.

In December 2020, in the midst of a deepening economic crisis in Turkey, the President announced yet again Turkey's commitment to democratic reforms,<sup>230</sup> and to enhancing relations with the EU,<sup>231</sup> in an attempt to restore economic confidence and stability. As a result, the Human Rights Action Plan was once again brought back to the agenda,<sup>232</sup> and was finally published on March 2, 2021.<sup>233</sup> However, the many ups and downs of the process raised genuine concerns about the Government's commitment to improving its human rights policy.

The new presidential system of government, put in place following the referendum in April 2017, has proved to be another obstacle to stakeholder and civil society participation, notably during the elaboration of the Action Plan. Under the new system, the Ministries have significantly less power, and their proposals must be evaluated and approved by the relevant policy committees under the Presidency, which, for the time being, have not engaged with civil society actors.<sup>234</sup> While some civil society actors had multiple exchanges with the Ministry of Justice within the scope of the Human Rights Action Plan, they therefore believed that their suggestions might not be included in the final version. Indeed, even if their proposals were taken into account by the Ministry, the relevant policy committee and/or the President might end up removing all the proposals that they did not deem appropriate.<sup>235</sup> Thus, the concentration of power in the hands of the Presidency remains a major obstacle to the genuine participation of civil society and other stakeholders in the policy- and decision-making process.

227 Bianet, "İnsan hakları eylem planında" neler olmalı? (November 18, 2020). Available at: <https://m.bianet.org/bianet/insan-haklari/234611-insan-haklari-eylem-planinda-neler-olmeli>.

228 Bianet, TIHV'den Adalet Bakanlığı'na Ret: İnsan Hakları Eylem Planı Toplantısına Katılmayacağız (December 20, 2019). Available at: <https://m.bianet.org/bianet/siyaset/217455-tihv-den-adalet-bakanligi-na-ret-insan-haklari-eylem-planı-toplantısına-katılmayacağız>.

229 İHD, İHD Report on the "New Human Rights Action Plan" (January 21, 2020). Available at: <https://ihd.org.tr/en/ihd-report-on-the-new-human-rights-action-plan>.

230 Anadolu Ajansı, Cumhurbaşkanı Erdoğan: 2021 yılı milletimize söz verdiğimiz gibi demokratik ve ekonomik reformlar yılı olacak (December 26, 2020). Available at: <https://www.aa.com.tr/tr/politika/cumhurbaskani-erdogan-2021-yili-milletimize-soz-verdigimiz-gibi-demokratik-ve-ekonomik-reformlar-yili-olacak/2089361>.

231 DW, Erdoğan: AB ile ilişkileri rayına oturtmaya hazırız (January 12, 2021). Available at: <https://www.dw.com/tr/erdo%C4%9Fan-ab-ile-ili%C5%9Fkileri-ray%C4%B1na-oturtmaya-haz%C4%B1r%C4%B1z/a-56204847>.

232 Bianet, Erdoğan: İnsan Hakları Eylem Planı hazırlıyoruz (November 17, 2020). Available at: <https://m.bianet.org/bianet/insan-haklari/234582-erdogan-insan-haklari-eylem-planı-hazırlıyoruz>.

233 Ministry of Justice, Action Plan on Human Rights (March 2021). Available at: <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>.

234 Gazete Duvar, İHD, Bakan Gül'le görüştü: İmralı, hak ihlalleri, açlık grevleri (December 9, 2020). Available at: <https://www.gazeteduvar.com.tr/ihd-adalet-bakanligıyla-gorustu-neler-konusuldu-haber-1506817>.

235 *Ibid.*

Indeed, in line with civil society's concerns, the final version of the Plan does not propose any actions in priority areas for civil society, including the reform of anti-terror legislation, the independence of the Judiciary from the political power, and the protection of HRDs. While the Plan includes a number of limited positive developments, at its heart it lacks any strong commitment to reform in the areas adversely affecting the fundamental rights of individuals, and the implementation of its proposed actions remains a major question.

Even the public institutions with a mandate to advance human rights, such as the Equality and Human Rights Institution<sup>236</sup> ("TIHEK"), are not seen as potential partners by civil society actors.<sup>237</sup> Due to poor institutional guarantees against political influence, these institutions usually follow the Government's narrative and neither meet the requirements of independence and impartiality that would make them valuable interlocutors, nor fulfil their duty to protect human rights.<sup>238</sup> Among many other institutional deficiencies, it is problematic in itself that TIHEK, an institution with a mandate to fight against discrimination, has only one female member out of its 11 members.<sup>239</sup> In addition, TIHEK's work does not align with the principle of the universality of human rights, in that it echoes the Government's hateful narrative against LGBTI+ persons.<sup>240</sup> This discriminatory attitude is also reflected in its activities as an institution.

Professional organisations, such as bar associations, medical associations, and unions, are included in policy- and law-making spaces to a certain extent, thanks to their professional role and legitimacy in the eyes of the public.<sup>241</sup> However, the Government remains intolerant of the criticism expressed by those organisations. There have been several attempts by the Government to replace the system of centralised and legally-established professional associations with a system of a plurality of professional associations, wherein members of a profession are free to establish independent professional associations in order to represent themselves, rather than being members of the centralised association representing all members of a profession. This in turn would enable the authorities to pick the professional associations they would like to engage with, giving them the option of excluding the more critical professional associations from such collaborations. In line with this atmosphere of rising antagonism, the most recent legislative amendment, from July 2020, effected significant structural changes to the bar associations.<sup>242</sup> The new law allows multiple bar associations to be established in cities with more than 5,000 lawyers, and also proposes a change in the representation of local bar associations within the Union of Bar Associations. This legislative change was introduced against the backdrop of

236 More information about this institution can be found on its website, at: <https://www.tihek.gov.tr/en>.

237 Online Interview no. 5 in May 2020 with a civil society representative.

238 Online Interview no. 7 in May 2020 with a civil society representative.

239 See, TIHEK, Kurul Üyeleri. Available at: <https://www.tihek.gov.tr/kategori/kurul-uyeleri>.

240 For instance, in the "Right to Protection of Family Symposium," organised by TIHEK in 2019, the final declaration included discriminatory language against LGBTI+ persons. KAOS GL, TIHEK insists on discrimination: "Same-sex partnership is not an alternative" (May 22, 2019). Available at: <https://kaosgl.org/en/single-news/tihek-insists-on-discrimination-same-sex-partnership-is-not-an-alternative>. On another occasion, a member of TIHEK targeted the Pride March and LGBTI+ individuals in his social media postings. KAOS GL, İnsan Hakları Kurulu üyesinin homofobisi Kamu Denetçiliği'nde (September 22, 2018). Available at: <https://kaosgl.org/haber/insan-haklari-kurulu-uyesinin-homofobisi-kamu-denetciliginde>. Finally, TIHEK was also criticised for rejecting an application by two trans individuals who claimed that they were discriminated against by a hotel that refused to host them. TIHEK claimed that gender identity cannot be considered as a ground for discrimination, though this decision was later overturned by an administrative court. KAOS GL, TIHEK'in hukuksuz kararına iptal (December 13, 2019). Available at: <https://kaosgl.org/haber/tihek-in-hukuksuz-kararina-iptal>.

241 It should be noted that even professional associations are excluded from policy and decision-making spaces in many cases. For instance, the Turkish Medical Association was not included in the establishment of the Scientific Council (*Bilim Kurulu*) by the Ministry of Health in relation to the Covid-19 pandemic.

242 Law on the Amendment of Law no. 7249 on Lawyers and Other Laws (*7249 Avukatlık Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun*) published in the Official Gazette no. 31186, dated July 15, 2020, and entered into force on the day of its publication.

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several bar associations' statements condemning the hate speech by high-level public officials against LGBTI+ persons.<sup>243</sup> For this reason, the legislative amendment was perceived as an attempt to silence bar associations and gain control over them, whereas the Government simply presented it as a means to ensure plurality and democracy within bar associations. The President signalled similar plans to change the structure of the Turkish Medical Association, following repeated criticism by the latter of the Government's policies, including its handling of the Covid-19 pandemic.<sup>244</sup>

The lack of meaningful consultations with civil society actors results in poor policies that fail to take their perspectives into account, and that often fail to address the issues that civil society is facing. For instance, the Ministry of Health elaborated its five-year HIV Control Programme without any consultations with the LGBTI+ rights organisations focused on people living with HIV, although these groups could clearly have offered their expertise and experience on tackling the issue.<sup>245</sup> On the contrary, the LGBTI+ organisations learnt about this programme in the newspaper.

Currently, while some opportunities exist at the municipal level, civil society actors remain mostly excluded from policy- and decision-making spaces, and our findings confirm the lack of meaningful, effective, and timely participation, or indeed any genuine opportunity to influence the outcome of processes that may affect them. It is beyond doubt that any attempt at meaningful engagement with civil society would require halting the stigmatisation of legitimate civil society actors, which would in turn provide a more enabling space for dialogue. Civil society actors are indeed an inalienable part of a healthy democracy, and they should be provided with genuine opportunities to share their expertise with the decision- and policy-makers. Without meaningful engagement with human rights associations, and by ignoring their perspective and calls for institutional reform,<sup>246</sup> any reform package will likely be incapable of achieving the purported aim of advancing human rights and restoring the rule of law in Turkey.

## **b. Counter Human Rights Narratives and Pro-Government Civil Society**

In parallel with the closing space for dialogue with human rights organisations, an "alternative" civil society has emerged in Turkey in recent years, one that is less critical of the Government's policies and that generally aligns with them. While human rights organisations have been marginalised through a stigmatising narrative and repressed through harassment tactics, those alternative organisations have gained power, and replaced the former in decision-making spaces and in partnership with the State administration. The emergence of such organisations, and their participation in public processes, is not a problem *per se* in a democratic environment. Nevertheless, in a context that is extremely hostile towards independent civil society, and where the space for the latter is progressively shrinking, their role should be carefully assessed.

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*"For instance, in the women's rights field, you would normally invite (...) [naming a well-known organisation]. If an organisation, whom we haven't heard of, is invited instead, it means that this organisation either has a connection to someone [in power] or is founded for a particular purpose"*<sup>247</sup>

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When civil society participation is required by law, or in order to comply with the recommendations of international bodies, these alternative organisations serve the purpose

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243 For more information, see, ILGA Europe & FIDH *et al.*, Joint Statement – End hate speech and targeted attacks against LGBTI people in Turkey (May 12, 2020). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/end-hate-speech-and-targeted-attacks-against-lgbti-people-in-turkey>.

244 BBC News, Türk Tabipleri Birliği: Cumhurbaşkanı Erdoğan'ın 'terörle iç içe' dediği TTB'nin yapısı için hangi değişiklikler gündemde? (October 16, 2020). Available at: <https://www.bbc.com/turkce/54564372>.

245 Online Interview no. 5 in May 2020 with a civil society representative.

246 *Ibid.*

247 Online Interview no. 14 in November 2020 with a civil society representative.

of "ensuring civil society participation" in policy and decision-making spaces; in reality their participation is only a box-ticking exercise.<sup>248</sup> Those actors enhance the legitimacy of the Government's policies by creating an artificial image of civil society support both at the domestic and international level. Simultaneously, these organisations disseminate alternative human rights narratives, which are allegedly based on the "traditional values of the society in Turkey," but which in fact ignore serious human rights issues on the ground as well as the underlying institutional deficiencies. Such attempts to eliminate genuine criticism, to the advantage of Government-friendly actors, impedes the very purpose of stakeholder participation and only endangers democratic debate in Turkey. Genuine independent civil society participation and space for criticism are the keys to address Turkey's long-lasting and deep-rooted human rights issues.

Our sources also indicated that these organisations receive considerable financial support through public funding.<sup>249</sup> In many cases, partnership protocols are concluded with, and funding is granted by the State to those organisations, enabling them to participate in State activities while also providing financial resources to support these organisations' work. However, there is no transparency concerning the financial resources made available to those organisations, and no comprehensive research or data exist confirming the number of those organisations or the extent of the support.<sup>250</sup>

#### **Box #7 – Counter Narratives in Women's Rights**

The above-mentioned strategy is the most visible in the field of women's rights. In the last couple of years, new organisations with strong ties to the Government, who put family at the centre of their activities, and respect the so-called "natural differences" between the sexes, have emerged.<sup>251</sup> The Government also openly shifted its focus towards the "protection of family" and away from gender equality. Existing mechanisms that protect women in case of gender-based violence and guarantee their financial independence after divorce have been criticised for allegedly "damaging the family" in the pro-Government media, as well as by high-level Government officials.<sup>252</sup>

Longstanding women's rights organisations, on the other hand, have been the target of smear campaigns by the same actors for "being against the family," "being pro-LGBTI+," and "not being in conformity with the society's values."<sup>253</sup> Simultaneously, they have been gradually pushed out of the policy space and deprived of collaboration opportunities with State actors, both at the local and Ministry level, that they had long enjoyed.<sup>254</sup> Instead, the alternative organisations, including those working on women's issues, took their seats and became increasingly visible. These organisations opened offices in multiple cities, including where women's rights organisations were shut down by emergency decrees, in a very short period of time, in a clear sign that they were financially well-endowed.<sup>255</sup>

248 *Ibid.*

249 For instance, according to a report shared with the public by an opponent politician, during the period of AKP rule of the Istanbul Municipality, an overwhelming majority of the financial and non-financial contributions by the Municipality was allocated to the pro-Government organisations, some of which were founded by the relatives of high-level Government officials. See, DW, İBB eski yönetimi Erdoğan'a yakın vakıflara ne kadar para yardımı yaptı? (April 19, 2019). Available at: <https://www.dw.com/tr/ibb-eski-y%C3%B6netimi-erdo%C4%9Fana-yak%C4%B1n-vak%C4%B1flara-ne-kadar-para-yard%C4%B1m%C4%B1-yapt%C4%B1/a-48397744>. For the report, see, Istanbul Metropolitan Municipality, STK – Okul – Yurt Faaliyet Raporu 2018. Available at: <https://www.dw.com/downloads/48397760/ibbfaaliyet-raporu.pdf>.

250 Online Interview no. 10 in May 2020 with a civil society representative.

251 Turkey's Second VNR Civil Society Alternative Report, p. 5 (July 2019). Available at: [http://www.kadinininsanhaklari.org/wp-content/uploads/2019/07/rapor\\_ing\\_2-web-icin.pdf](http://www.kadinininsanhaklari.org/wp-content/uploads/2019/07/rapor_ing_2-web-icin.pdf); Istanbul Convention Monitoring Platform Turkey, Shadow NGO Report on Turkey's First Report, pp. 11-12 (September 2017). Available at: <https://rm.coe.int/turkey-shadow-report-2/16807441a1>.

252 Istanbul Convention Monitoring Platform Turkey, Shadow NGO Report on Turkey's First Report, pp. 10-11 (September 2017).

253 Online Interview no. 4 in May 2020 with a civil society representative.

254 Online Interview no. 15 in November 2020 with a civil society representative.

255 Online Interview no. 10 in May 2020 with a civil society representative.

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This new narrative also transformed into attempts to change the law. Most significantly, the Council of Europe's Istanbul Convention was put under scrutiny and criticised on many occasions on grounds such as "promoting homosexuality," "damaging family," and "favouring women." This constant criticism resonated with high-level Government officials too. The Deputy Vice President of the AKP said in a TV programme in July 2020 that signing the "Istanbul Convention was wrong," and that Turkey can "withdraw from the Convention."<sup>256</sup> The issue also caused a major division within the ruling party and among many organisations with close ties with the Government.<sup>257</sup> The public discussion of the potential withdrawal from the Istanbul Convention was put on hold for a while, due to the division within the ruling party, and polls showing that the majority of the public did not support the idea.<sup>258</sup> Nevertheless, on March 20, 2021 Turkey withdrew from the Istanbul Convention after a mere presidential decision.<sup>259</sup> This is a clear demonstration of how far alternative narratives can go in terms of shifting Turkey's human rights priorities.

## G. Impacts of the Shrinking Space on Civil Society Actors and HRDs

### a. Chilling Effect of the Restrictions

The criminalisation of civil society actors and HRDs, along with the arbitrary emergency rule measures and the constant stigmatisation by the Government and on public media, has established a climate of fear in Turkey. In an environment where civil society actors can find themselves behind bars and/or see their organisation harassed or shut down for any expression of dissent, self-censorship is inevitable. In an attempt to protect themselves and their work from further damage, many civil society actors and HRDs have had to scale down their activities and/or pay extra attention to their language and visibility, by choice or by force of circumstances.

The restrictions on civic space and the vilification of human rights work has had a significant impact on the participation of a wider circle in those activities. According to a civil society representative, civil servants have particular concerns about being profiled, and fear losing their jobs in the public sector, which obstructs their ability to become members of and/or participate in the activities of civil society organisations, especially stigmatised ones such as

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256 Anadolu Ajansı, AK Parti Genel Başkanvekili Kurtulmuş: Usulünü yerine getirerek İstanbul Sözleşmesi'nden çıkılır (July 2, 2020). Available at: <https://www.aa.com.tr/tr/politika/ak-parti-genel-baskanvekili-kurtulmus-usulunu-yerine-getirerek-istanbul-sozlesmesinden-cikilir/1897094>.

257 DW, AKP'de İstanbul Sözleşmesi çatlağı büyüyor (August 8, 2020). Available at: <https://www.dw.com/tr/akpde-istanbul-s%C3%B6zle%C5%9Fmesi-%C3%A7atla%C4%9F%C4%B1-b%C3%BCy%C3%BCyor/a-54429310>. What is more striking in this particular case is that even a women's rights organisation with strong ties to the Government was targeted by other more conservative pro-Government actors for its support of the Convention, while simultaneously the organisation was trying to dissociate itself from the pro-LGBTI+ women's rights groups. Thus, the organisation also became the victim of the Government-encouraged narrative demonising "gender equality" and the receipt of financial support from the EU. This is a clear demonstration of how the State-led narratives demonising gender equality can be harmful and have far-reaching adverse impacts, including the organisations otherwise close to the Government. See, BBC News, KADEM'den İstanbul Sözleşmesi'ne destek: "Şiddete başvurup bir tarafa zulmedilen bir ilişkide artık 'aile'den bahsedemeyiz" (August 1, 2020). Available at: <https://www.bbc.com/turkce/haberler-turkiye-53623077>.

258 SES Eşitlik, Adalet, Kadın Platformu, Toplumun Yüzde 63'ü İstanbul Sözleşmesi'nden Çekilmeye Karşı (July 29, 2020). Available at: <http://esitlikadaletkadın.org/metropoll-yuzde-63-6-istanbul-sozlesmesinden-cekilmeye-karsi>.

259 Directorate of Communications of the Presidency of the Republic of Turkey, Statement regarding Türkiye's withdrawal from the Istanbul Convention (March 22, 2021). Available at: <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>



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LGBTI+ rights organisations.<sup>260</sup> Many organisations have seen a decrease in participation in a number of their activities. A women's rights defender reported that while participation in panels and workshops remains very high, participation in activities such as organising campaigns and demonstrations, which require people to take responsibility and action, has fallen off dramatically.<sup>261</sup> Similarly, another civil society actor revealed that the impacts are felt in the environmental movement too, and mentioned that civil society organisations experience difficulties in mobilising people, beyond their core members, to join their activities and social media campaigns, even for relatively low-risk activities.<sup>262</sup> Others have seen a record number of requests by people who formerly participated in their activities to have their written pieces on the organisation's website removed, even when they were published under pseudonyms, demonstrating just how high the perception of risk is.<sup>263</sup> Our sources noted that this hesitation to take part in civil society activities is not due only to the high risks themselves, but also to the fact that people do not believe that the risks are worth the potential benefits of their participation. In other words, they no longer believe that positive results or change can be achieved through their actions.<sup>264</sup>

This hostile environment also leads to the isolation of civil society actors and HRDs.<sup>265</sup> Especially during the emergency rule, the repression was so severe that many people did not feel free to express their support even to others who were suffering from harassment and intimidation, over fears of reprisals. A civil society actor reported that during the period of the closure of her association and of her judicial harassment, she did not receive the support she needed from her colleagues within civil society, and even from her friends, because they were afraid to stand by her.<sup>266</sup> Furthermore, due to the stigmatisation and harassment she faced, people working with her at different levels were hesitant to give her visibility and/or space in their activities, over fears of reprisals and/or stigmatisation. Disengagement of wider audiences from civil society activities is another factor contributing to the increased isolation of civil society actors and HRDs. Not only are there fewer people to speak up against human rights violations, but also fewer to show solidarity and support for those who are harassed based on their human rights activism. Being deprived of much-needed support and solidarity, many civil society actors and HRDs feel isolated.

Furthermore, heavy restrictions and the hostile environment also result in considerable amount of time being devoted to issues other than their substantive human rights work, such as fulfilling administrative requirements with maximum diligence, carefully assessing the risks posed by each word used in a press statement, and participating in and/or monitoring the criminal cases launched against them and/or their colleagues. This prevents civil society actors and HRDs from using their time to actually advocate against human rights violations, instead of concentrating on the risks they themselves face.

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260 Online Interview no. 5 in May 2020 with a civil society representative.

261 Online Interview no. 4 in May 2020 with a civil society representative.

262 Online Interview no. 9 in May 2020 with a civil society representative.

263 Online Interview no. 5 in May 2020 with a civil society representative.

264 Online Interview no. 4 in May 2020 with a civil society representative.

265 Online Interview no. 3 in May 2020 with a civil society representative.

266 Online Interview no. 15 in November 2020 with a civil society representative.

### Box #8 – Harassment of Academics for Peace

On January 10, 2016, over a thousand academics published a declaration entitled “We will not be party to this crime,” calling for an end to the violence in the South-East of Turkey, on behalf of the Academics for Peace Initiative. Within a few months, the number of academics who signed the declaration reached 2,212. In the period following the release, these academics faced relentless harassment from the authorities, including at the judicial level. The judicial harassment was eventually halted by a Constitutional Court decision,<sup>267</sup> recognising the violation of their right to freedom of speech, but their harassment continues to date at different levels, leaving them mired in a constant struggle.

In the period following the petition, criminal cases were launched against more than 800 academics. Most of those criminal cases, based on the same allegedly incriminating act of signing the peace petition, were launched separately, making it considerably more difficult for their lawyers to follow the cases. In total, the lawyers and others who wanted to follow the hearings to show support or to document potential rights violations, had to participate in more than 2,000 hearings concerning more than 800 academics.<sup>268</sup> As a result of these proceedings, 168 academics received suspended prison sentences (including deferrals of the pronouncement of the verdict – *hükümün açıklanmasının geri bırakılması*), while the sentences of 36 academics were not suspended.<sup>269</sup> During this process, five academics were detained: four were put in pre-trial detention in March 2016 for over a month, and one was imprisoned to serve her sentence in May 2019 after it was approved by the Court of Appeals.<sup>270</sup> In addition to the constant fears of being judicially harassed and/or imprisoned, the suspended prison sentences also created a considerable chilling effect on the academics. If the person is convicted of another crime within the following five years, they risk serving the first prison sentence as well (see Section III. iv “Prison Sentences and Other Repercussions” for more details about the suspension of sentences). This meant that they had to be much more circumspect in their expressions of criticism as well as in their human rights activities within the following years, which in turn severely limited their freedom of expression and their academic freedom.

Their harassment intensified and took other forms during the emergency rule. A total of 549 Academics for Peace were dismissed, or forced to resign, from their academic posts by emergency decrees, and banned for life from public service.<sup>271</sup> This meant the end of their academic careers in Turkey, and also the loss of their income. Due to the stigmatisation and vilification that they faced, it has been extremely challenging for them to find new jobs in the private sector. Many had to flee the country in the hopes of pursuing their academic careers abroad, but others have seen their passports cancelled, effectively imprisoning them in Turkey with no viable financial opportunities or social security. Many academics have completely shifted their careers, and some have opened restaurants or started farming. The others formed solidarity networks to support each other in creating new opportunities. Those who fled the country have also been continuously harassed through the revocation of their passports and

267 Constitutional Court of Turkey – General Assembly, Zübeyde Füsün Üstel and others, application no: 2018/17635, decision date: 26/7/2019. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>.

268 Academics for Peace, Hearing Statistics as of 14.01.2021. Available at: <https://docs.google.com/spreadsheets/d/e/2PACX-1vT05GTWUQMDot1iPfmSieJsWLGBoBorNIJyLP5IdtvJVEcKRw8C8qMxFXPighYZkz7pf2ENP2bXZ3DMo/pubhtml?gid=1873917137&chrome=false&widget=false>.

269 Academics for Peace, Barış için Akademisyenlere Yönelik Hak İhlalleri / Rights Violations Against “Academics for Peace” (last update on January 14, 2021). Available at: <https://barisicinakademisyenler.net/node/314>.

270 For more details on both cases, see, Front Line Defenders, Judicial Harassment against the Members of Academics for Peace (last update on November 8, 2019). Available at: <https://www.frontlinedefenders.org/en/case/judicial-harassment-academics-peace#case-update-id-9710>.

271 Academics for Peace, Barış için Akademisyenlere Yönelik Hak İhlalleri / Rights Violations Against “Academics for Peace” (last update on January 14, 2021).

the refusal to provide other necessary services by the embassies of Turkey.<sup>272</sup> The harassment of the Academics for Peace continues to this day, and the legal, financial, and other implications have created a substantial chilling effect on academics, along with other civil society actors and HRDs.

## b. Well-being

Human rights work entails serious risks to its practitioners' physical and psychological health. Civil society actors and HRDs face a real danger of secondary trauma because of their challenging work.<sup>273</sup> Combined with the relentless harassment of civil society actors and HRDs, this work is indeed a major source of stress. Many civil society actors and HRDs are heavily affected by the harassment and intimidation faced by their colleagues and/or friends, even if they themselves don't face any direct harassment.<sup>274</sup> Moreover, the excessive workload and financial difficulties deriving from the overall hostile environment, constant harassment, and reduced resources add another layer to those challenges. Indeed, many civil society actors are under overwhelming pressure, due both to the country's lamentable human rights record and to the harassment they face. On top of that, some of them work extra hours just to earn a living, and/or to generate extra financial resources for their organisations.

According to our sources, well-being is a real issue within civil society in Turkey, and one that has long been neglected in a context where civil society's struggle to survive has taken precedence over individuals' health and well-being. However, the need for psychosocial support is clear. Accustomed to focusing on the violations of others' rights rather than on themselves, civil society actors and HRDs in Turkey are often oblivious about their own well-being, and most organisations lack either a comprehensive well-being policy or the expertise to address this issue. Civil society actors indeed reported that well-being is not a priority for many civil society organisations, nor is it one for donors or international actors.<sup>275</sup> The only exceptions in civil society are the large-scale organisations focusing on severe abuses such as torture. Due to the severe secondary trauma that their members are exposed to on a daily basis, those organisations are more experienced in providing psychological support.

There are several barriers to accessing psychosocial support, the most significant being a lack of financial resources. Civil society organisations, already facing financial difficulties in maintaining their activities and paying their staff members, are unable to provide proper psychosocial support to them. Similarly, the salaries in civil society remain low, and in many cases insufficient to permit individuals to seek support in their personal capacity.<sup>276</sup> For this reason, it is very important for donors to step up and provide extra support to their beneficiaries in tackling the potential well-being-related issues that they may face during the course of a project funded by these donors.

Another challenge is the overwhelming workload, which does not leave enough time for self-care.<sup>277</sup> In an environment where human rights violations are so widespread, civil society actors and HRDs prioritise providing support to those who have suffered serious rights abuses, over self-care. There is also a generational aspect. Many older civil society actors and HRDs believe that human rights activism is their therapy, and that speaking up against injustice provides its own form of relief.<sup>278</sup> Finally, similar to many other parts of the world, there is considerable stigma around seeking psychological support.

272 For detailed information see, TIHV, Barış İçin Akademisyenler: Yurt Dışında Yaşayan ve KHK ile İhraç Edilmiş Akademisyenlerin Uğradığı Hak İhlalleri (November 27, 2020). Available at: [https://tihvakademi.org/wp-content/uploads/2020/11/BAK\\_Guncel\\_Durum\\_Raporu\\_Kasim\\_2020.pdf](https://tihvakademi.org/wp-content/uploads/2020/11/BAK_Guncel_Durum_Raporu_Kasim_2020.pdf).

273 Online Interview no. 14 in November 2020 with a civil society representative.

274 Online Interview no. 7 in May 2020 with a civil society representative.

275 Online Interview no. 5 in May 2020 with a civil society representative.

276 *Ibid.*

277 Online Interview no. 3 in May 2020 with a civil society representative.

278 Online Interview no. 6 in May 2020 with a civil society representative.

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In an environment where awareness around well-being is low, civil society actors and HRDs do not even realise that they may need support, due to their overwhelming workload, lack of time and resources, and their dedication to human rights work. This results in HRDs stretching their capacity to carry out their human rights work and neglecting their own health and well-being while doing so. Yet, preserving staff's health and well-being is key to ensuring the continuity and sustainability of human rights work in the long run, and to making sure that human resources within civil society do not leave the sector due to burn-out or well-being-related reasons. In some cases, civil society and HRDs may not even know where to seek professional support for the particular issues they are experiencing. Yet, as awareness is raised about the importance of self-care and psychosocial support within civil society, more and more actors may feel comfortable seeking support. Therefore, institutional approaches to well-being should be encouraged and supported by international actors by building capacity and expertise within civil society to detect and mitigate risks to staff's health and well-being, and organisational strategies put in place to address them. Indeed, this is essential to ensure that civil society as a whole concentrates on the question of well-being, which has such serious impact on their work and life quality, and that working conditions, which in turn are closely related to civil society organisations' ability to carry out their work and achieve results, remain sustainable in the long run.

### c. The Future Role of Civil Society

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*"We have never been ignored so much. They make you feel this way. This drives hopelessness (...). Whatever we say is not going to be implemented anyway."*<sup>279</sup>

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In recent years, civil society's core mission has been challenged in many ways. A hostile environment, limited resources, and an inability to engage with decision-makers have undermined the very purpose of civil society work, and raised questions about its ability to achieve any improvements in the human rights record of Turkey. Indeed, many civil society actors and HRDs feel like they are facing immense difficulties to continue their human rights work, as despite their efforts their work's actual impact remains minimal and fails to lead to substantial change. Indeed, some civil society actors lament that it is often only their peers, at the national and international level, who read their reports and participate in their activities, while their actions' main targets remain deaf to their pleas.<sup>280</sup> This also significantly affects their motivation to keep up their work. A civil society representative reported that especially their young members have lost hope in the possibility of achieving change, and that this despair also affects their eagerness to engage with and effectively react to human rights violations.<sup>281</sup> Indeed, the cost-effectiveness of human rights work is increasingly imbalanced, as the enormous risks that HRDs face are incomparably large when compared to the results that they can realistically expect to achieve.

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*"Civil society organisations exist to contribute to change, but the public authorities closed their doors to civil society organisations. We are creating and writing reports by ourselves, but nobody takes them into account. Therefore, we are in a situation in which civil society's mission is undermined."*<sup>282</sup>

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279 Online Interview no. 1 in May 2020 with a civil society representative.

280 Online Interview no. 3 in May 2020 with a civil society representative.

281 Online Interview no. 1 in May 2020 with a civil society representative.

282 Online Interview no. 3 in May 2020 with a civil society representative.

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These challenges do not affect all civil society actors and HRDs in the same way. Civil society in Turkey remains resilient despite multiple challenges, and some actors continue their work in dire conditions with even more determination than before, feeling that it is their duty to speak up against rights violations and to seek justice. During the repression of the past few years, many civil society organisations shifted their focus to areas where more opportunities lie. Indeed, some had to limit and/or redesign those activities that exposed them to particularly acute risks, but this did not mean that civil society organisations gave up their work in the most challenging fields.

A civil society representative mentioned for example that during these challenging times, they have been focusing on building their internal monitoring and reporting capacity, putting in place the necessary measures and policies for the same purpose, and also supporting others to strengthen the capacities of the movement as a whole.<sup>283</sup> They also have sought strategic alliances and prioritised collaborating with other actors who are more open to engagement, such as the private sector, municipalities, and professional associations. Focusing on positive stories and lifting each others' spirits remain another priority for them. Other organisations have diversified their work and enhanced their capacity by collaborating with actors who were deprived of the resources to continue human rights work.<sup>284</sup> For instance, they conducted joint projects with the members of organisations that were shut down by emergency decrees, and with those who lost their jobs in public office. While their areas of work broadened, their human resources and funding also increased.

The global Covid-19 pandemic has posed additional challenges for civil society, while also offering new opportunities and opening up new areas. Many organisations have shown great flexibility and adapted quickly to the migration towards online platforms for a variety of activities. It helped them to reduce distances and reach out to a wider audience – including the representatives of international human rights protection mechanisms – and strengthened cooperation with international networks through online meetings and events. Similarly, at the management level, internal coordination was enhanced, and civil society actors were able to cooperate without the need for constant travelling.<sup>285</sup> On the other hand, barriers to organising in-person activities have posed challenges for the organisations focusing on documenting rights violations on the ground, and on providing emergency support to survivors, e.g. of gender-based violence, ill-treatment, and torture, and to other vulnerable groups such as migrants and refugees.<sup>286</sup> For instance, it has proven extremely hard to access prisons to monitor rights violations there, due to limitations on lawyer and family visits as part of Covid-19 measures.<sup>287</sup> The pandemic has also created extra challenges for grassroots movements operating on the ground, such as the environmental rights movement, which is unable to gather and organise against destructive projects due to social distancing and lockdown measures.<sup>288</sup> Organisations were also deprived of the opportunities for genuine communication of the kind facilitated by face-to-face workshops and trainings. For example, a civil society representative highlighted that face-to-face trainings are irreplaceable in terms of bringing out the human side and in breaking stereotypes.<sup>289</sup> In some in-person trainings, the participants – outside of the LGBTI+ community – find themselves communicating directly for the first time with members of the LGBTI+ community, which helps them to counteract the vilification of LGBTI+ individuals and to break their prejudices. Similarly, the travel restrictions due to the pandemic have lately prevented civil society actors and HRDs from taking part in in-person activities organised and from seizing opportunities offered by their international counterparts. This includes rest & respite programmes, by which they are offered the relief they need to sustain their work in dire conditions, and in-person advocacy opportunities at the international level.

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283 Online Interview no. 5 in May 2020 with a civil society representative.

284 Online Interview no. 7 in May 2020 with a civil society representative.

285 Online Interview no. 10 in May 2020 with a civil society representative.

286 Online Interview no. 5 in May 2020 with a civil society representative.

287 Online Interview no. 7 in May 2020 with a civil society representative.

288 Online Interview no. 18 in March 2021 with a civil society representative.

289 Online Interview no. 5 in May 2020 with a civil society representative.

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As the global pandemic continues, civil society in Turkey remains challenged by the barriers posed by health and safety requirements and social distancing measures. Through the means that are currently available to civil society, it continues to strive to help lead the country to a more democratic future, where the fundamental rights of diverse groups are respected and the rule of law prevails. In spite of the resilience and courage shown by civil society actors and HRDs in Turkey, the accumulation of all the challenges described in this Report puts this resilience and sometimes their very existence at risk. In the current context, international support and solidarity in different forms remain crucial to enable them to survive and to thrive.

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## IV. CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

This Report has sought to document and expose the situation in which civil society organisations and HRDs operate in Turkey, by focusing on the challenges they face in exercising their fundamental rights to freedom of association, to freedom of expression and opinion, and to defend human rights. Indeed, the Report shows how these rights have been gradually undermined through restrictive laws, policies, and practices, especially in the aftermath of the attempted coup of 2016, the subsequent two-year-long emergency rule, and up to the present day.

The findings of this Report reveal not only the State's failure to ensure an enabling environment for civil society in Turkey, but also its intensified attempts – by Government officials and pro-Government media – to undermine civil society activities through a hostile and stigmatising narrative portraying civil society actors and HRDs as individuals pursuing foreign interests, impeding national security, and/or promoting the objectives of terrorist organisations. This stigmatising narrative serves the purpose of legitimising the crackdown against those allegedly "criminal" individuals and organisations, through the abuse of the criminal justice system. Civil society actors and HRDs often face baseless and bogus criminal investigations and/or prosecutions for their legitimate activities in defence of fundamental rights and the rule of law, as well as intimidation and other measures violating their right to liberty and curbing their activities, including arbitrary detention and travel bans.

The climate of fear was further enhanced by the arbitrary state of emergency measures in place between 2016 and 2018, the impacts of which are still heavily felt by civil society. Many associations shut down by emergency decrees, including those working on the rights of vulnerable individuals and groups, have still not been shown any concrete evidence or been offered reasons to justify the extreme measures implemented against them, including confiscation of their assets. Their applications challenging the emergency measures are still pending before the Inquiry Commission – a non-independent and ineffective body established to address these claims – which raises extreme concerns about their right to an effective remedy. Furthermore, civil society actors, HRDs, and those who participate in their activities continue to be profiled and harassed through various measures and practices that ensure the continuation of a *de facto* state of emergency.

The findings of this Report also document an environment in which civil society actors struggle to fulfil excessively burdensome administrative requirements. The legislation governing civil society activities remains extremely complex and hard to understand, especially for those who have less experience in fulfilling complex administrative and fiscal duties. These bureaucratic requirements are strictly applied by the authorities and are reported to be used as a pretext to crack down on civil society actors, especially by means of frequent and intensified politically-motivated audits. Furthermore, the recent legislative amendments, including Law no. 7262, enhance Government oversight and scrutiny over civil society through increased audits and other measures that would enable authorities to interfere in the internal affairs of NGOs and undermine their work. Finally, the lack of diversified funding opportunities, due to restrictive provisions, a hostile environment, and institutional deficiencies, coupled with the increasing diversion of funding towards newly emerged pro-Government NGOs, creates an extra challenge for independent civil society in continuing its activities.

The above-stated restrictions and constant intimidation establish a climate of fear, in which civil society actors feel oppressed and silenced. Amid the daily challenges posed by an openly hostile regulatory and societal environment, including stigmatisation and harassment, an overwhelming level of human rights abuses in the country, and institutional limitations in access to funding and other resources, many civil society actors and HRDs live under severe stress. Furthermore, deprived of any meaningful opportunities to engage in dialogue with the authorities, today many civil society actors and HRDs feel excluded from the decision-making process, and believe that the core mission of civil society is undermined. Independent civil

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society is increasingly replaced by other pro-Government actors in the policy space, and the latter are promoted as an alternative civil society with which the authorities can work smoothly. In such an environment, while a considerable number of prominent civil society actors and HRDs continue their work even more determinedly than before, some are fatigued by the daily challenges they face, and the obstacles to achieving tangible impacts on human rights in the country and, in some cases, to even surviving.

Against this backdrop, the international community has, for the most part, reacted timidly as the Government has gradually dismantled the rule of law, in breach of fundamental democratic principles, and crushed independent civil society. Indeed, many civil society actors and HRDs feel isolated and forgotten by the international community, which has consistently prioritised political and economic interests over respect for human rights and civic space in its relations with Turkey. Except for the EU's ongoing freeze of accession talks, international actors have only half-heartedly engaged thus far, and have expressed only mild criticism of the country's anti-democratic turn. The agreement – which marked its fifth anniversary in March 2021 – still in place between the EU and Turkey on Migration, by means of which the EU has outsourced the responsibility for migration management to Turkey based on its recognition as a "safe country of return," despite its poor human rights record, has acted as a deterrent for the EU and its member States to take more decisive action to denounce the critical human rights and rule of law situation in Turkey. As Turkey has recently renewed its commitment to the EU accession process – of which the respect for democracy and fundamental rights forms an essential part – this offers a valuable chance for international actors, particularly the EU and its member States, to review their position and demand that the Government of Turkey achieve tangible improvements in its human rights record and re-establish its relations with civil society actors.

In light of this, and based on the findings of this Report, several recommendations are formulated below, addressed to the attention of the Government of Turkey and to international actors. These recommendations represent an attempt to give voice to the legitimate concerns raised by civil society and HRDs in Turkey, and to encourage a fundamental course correction towards a healthy democracy strongly grounded in the rule of law and fundamental rights, including by acknowledging the fundamental role played by civil society in this context. International actors ought to take the necessary actions and exert pressure, both through diplomacy and by providing adequate support at multiple levels, to rapidly address the deteriorating situation relative to the rule of law, which severely affects fundamental rights and freedoms, and to support the fundamental work of civil society in Turkey. The Observatory trusts that this Report will provide valuable information and guidance to the national authorities and international actors in addressing the above-detailed challenges and in taking further steps to ensure that the rule of law, democracy, and human rights are preserved in Turkey, as well as to create the enabling conditions for civil society to thrive and continue its essential work to protect and promote human rights.



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## B. Recommendations

### a. To the Government of Turkey

#### On the restrictions to freedom of association and civic space:

- I. To respect in all circumstances the right to freedom of association that is protected by both the Constitution of Turkey and the international instruments ratified by Turkey, including the ICCPR and ECHR; to comply with both the negative and positive obligations of States in this respect; and to put an end to all arbitrary practices interfering with the essence of, or unreasonably restricting the right to, freedom of association;
- II. To give due recognition to and respect, in law and in practice, the right to defend human rights, as enshrined in the international instruments binding upon Turkey, as well as in the UN Declaration on Human Rights Defenders;
- III. To repeal all provisions in domestic legislation, in particular Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, that allow the authorities to unreasonably and arbitrarily restrict civil society activities and freedom of association;
- IV. To repeal all provisions in domestic legislation, particularly in the Anti-Terror Law, that allow for the criminalisation of dissent and of participation in civil society activities, and lead to the judicial harassment of civil society actors and HRDs based on those; and 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.<sup>290</sup>

#### On the protection of civil society actors and HRDs:

- V. To refrain in all circumstances from publicly stigmatising, delegitimising, or discrediting civil society actors and HRDs through hostile rhetoric or by promoting a negative narrative that associates them with criminals and/or terrorists; and to address any attempt, whether by public officials or non-State actors, to stigmatise civil society actors and HRDs, including those who belong to ethnic, religious, and sexual minorities, and other vulnerable groups;
- VI. To amend the legislation in order to fully recognise the bias motive as an aggravating circumstance in cases of hate speech and crime committed against civil society actors and HRDs by both State and non-State actors; to promptly, effectively and thoroughly investigate allegations of hate speech and hate crime against civil society actors and HRDs and ensure that perpetrators are brought to justice;
- VII. To put an end to all acts of harassment, including at the judicial and administrative level, against all civil society actors and HRDs for the legitimate and peaceful exercise of their right to freedom of association, to freedom of expression, and to defend human rights, and ensure in all circumstances that they are able to carry out their civil society and human rights activities without hindrance or fear of reprisals;

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<sup>290</sup> UN Special Rapporteurs, Joint Communication [OL TUR 13/2020](#) (August 26, 2020); UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders [A/HRC/40/52](#), particularly para. 75 (March 1, 2019); Commissioner for Human Rights of the Council of Europe, [CommDH\(2017\)5](#), Memorandum on freedom of expression and media freedom in Turkey, particularly para. 124 (February 15, 2017).

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- VIII. To put an end to arbitrary detention, including pre-trial detention, of all civil society actors and HRDs, to the extent linked to their legitimate civil society activities in defence of human rights; and to promptly and effectively execute ECtHR judgments requiring the immediate release of arbitrarily detained civil society actors and HRDs, and to refrain from publicly challenging the ECtHR's authority by suggesting that its decisions should not be binding upon Turkey.

**On the emergency rule measures:**

- IX. To repeal all provisions of emergency decrees integrated into ordinary law, and notably the measures shutting down civil society organisations based on their alleged "connection or contact with terrorist organisations";
- X. To suspend the Inquiry Commission for State of Emergency Measures, which does not align with international standards on access to meaningful, effective, and impartial remedy by victims; and instead, to ensure that civil society organisations previously shut down with emergency decrees have direct access to independent and lawful courts to challenge the rights violations they have suffered and to seek remedy and reparation, and that their constitutionally protected right to a fair trial is guaranteed in this context.

**On establishing an enabling environment for civil society:**

- XI. 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;
- XII. 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 stigmatisation and targeting of civil society organisations 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;
- XIII. To regularly engage with civil society actors and HRDs with a view to enhancing the respect for the rule of law and human rights in Turkey; and to ensure the timely, effective, and meaningful participation of the latter in policy and decision-making processes;
- XIV. To ensure at all times the respect for pluralism and diversity, which are fundamental principles in a democratic society founded on the rule of law and the respect for human rights, and to put an end to the ongoing crackdown on civil society and all critical voices, while upholding the freedom of expression of all segments of society, along with the right to freedom of assembly and association.

**On compliance with international law and cooperation with international actors:**

- XV. To fully comply with and execute rulings of the ECtHR as well as the recommendations made during the Universal Periodic Review of the United Nations Human Rights Council,<sup>291</sup> most recently in 2020, the periodic review of the UN Committee against Torture in 2016,<sup>292</sup> the periodic review of the UN Committee on the Elimination of

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291 UN Human Rights Council 44<sup>th</sup> session, Report of the Working Group on the Universal Periodic Review, Turkey, [A/HRC/44/14](#) (March 24, 2020).

292 Committee against Torture, Concluding observations on the fourth periodic report of Turkey, [CAT/C/TUR/CO/4](#) (June 2, 2016). See in particular recommendation no. 16.

Discrimination against Women in 2016,<sup>293</sup> in the report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression following his mission to Turkey in 2016,<sup>294</sup> as well as of the Office of the High Commissioner of Human Rights in 2018<sup>295</sup> in regard to the freedom of assembly and shrinking civic space in Turkey;

- XVI. 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;
- XVII. To issue a standing invitation to all relevant United Nations Special Procedures, including the Special Rapporteur on the Situation of Human Rights Defenders, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 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 more generally, which is necessary and indispensable in a democratic society, including in the context of the fight against terrorism.

## **b. To International Actors**

### **Recommendations to the UN:**

*To the States members of the UN Human Rights Council:*

- I. To enhance scrutiny by the Human Rights Council on the issue of shrinking civic space in Turkey, in particular on the impact that the emergency measures and other recent legislation have had on the rights to freedom of association, of assembly, and of expression, of civil society and HRDs, and to issue specific recommendations to ensure the full implementation of these rights;
- II. To publicly and collectively condemn the shrinking civic space in Turkey, both collectively as Human Rights Council members and bilaterally in their diplomatic relations with Turkey;
- III. To follow-up on the recommendations issued in the context of the last two Universal Periodic Reviews of Turkey,<sup>296</sup> in particular with regard to freedom of association and its impact on civic space.

*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:*

- IV. To grant particular attention to 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 by reacting to any deterioration that comes to their

293 Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey, *CEDAW/C/TUR/CO/7* (July 25, 2016). See in particular recommendation no. 11.

294 UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey *A/HRC/35/22/Add.3* (June 21, 2017).

295 UN Office of the High Commissioner of Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (March 2018).

296 UN Human Rights Council 44<sup>th</sup> session, Report of the Working Group on the Universal Periodic Review, Turkey, *A/HRC/44/14* (March 24, 2020). Available at: <https://undocs.org/A/HRC/44/14>; UN Human Rights Council 29<sup>th</sup> session, Report of the Working Group on the Universal Periodic Review, Turkey, *A/HRC/29/15* (April 13, 2015). Available at: <https://undocs.org/A/HRC/29/15>.

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;

- V. To follow-up on the public communication<sup>297</sup> on Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, which has the potential to seriously curb legitimate civil society activities and further restrict civic space in Turkey; and to remind the Government of Turkey of its obligations to take measures to guarantee the free exercise of civil society activities as outlined in the public communication;
- VI. To remind the Government of Turkey that any bill or policy which aims at countering terrorism and drug trafficking 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;
- VII. To renew their request to carry out a visit to Turkey with a view to analysing the situation of civil society and HRDs, and the respect for the rights to freedom of association, assembly and expression in Turkey, and report back to the UN Human Rights Council based on their findings and conclusions.

*To the UN Human Rights Committee:*

- VIII. 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 are having on civil society and HRDs, as part of its upcoming periodic review process, currently scheduled for 2021.

### **Recommendations to the Council of Europe:**

*To the Parliamentary Assembly:*

- I. 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 in Turkey on the work of civil society and HRDs, including by following up on its previous resolutions<sup>298</sup> and issuing new ones focusing on the state of these rights in the post-state of emergency period, and including specific recommendations in this regard;
- II. To keep assessing progress made towards the respect for democracy, the rule of law, and human rights by Turkey, including as part of its follow-up on the recommendations issued by the Parliamentary Assembly in the framework of the ongoing monitoring procedure for Turkey, launched in 2017.<sup>299</sup>

*To the Committee of Ministers:*

- III. 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 in Turkey on the functioning of civil society and HRDs, and to follow up on its previous resolutions, including by issuing new ones, including specific recommendations in this regard, in collaboration with other Council of Europe bodies and other international organisations;

<sup>297</sup> Mandates of the UN Special Rapporteurs, OL TUR 3/2021 (February 11, 2021).

<sup>298</sup> Parliamentary Assembly of Council of Europe ("PACE"), [Resolution 2156 \(2017\)](#), The functioning of democratic institutions in Turkey (April 25, 2017); PACE, [Resolution 2226 \(2018\)](#), New restrictions on NGO activities in Council of Europe member States (June 27, 2018); PACE, [Resolution 2260 \(2019\)](#), The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State? (January 24, 2019); PACE, [Resolution 2347 \(2020\)](#), New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards.

<sup>299</sup> PACE, [Resolution 2156 \(2017\)](#), The functioning of democratic institutions in Turkey (Apr 25, 2017). Also see, PACE, Honouring of obligations and commitments by Turkey – Information note following the visit to Istanbul and Ankara (28-30 March 2018), AS/Mon (2018) 07 (June 17, 2018).

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- IV. 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.<sup>300</sup>

*To the Commissioner for Human Rights:*

- V. To keep regularly monitoring the situation with regard to civil society, including freedom of assembly, association, and expression, and to issue further statements, briefings, and reports with specific recommendations in this regard;
- VI. To organise country visits 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;
- VII. To continue intervening in cases of HRDs, including those regarding violations of the right to freedom of association, assembly, and expression, before the ECtHR, and to follow up regarding implementation by the Government of Turkey of the relevant ECtHR judgments.

*To the Council of Europe institutions in general:*

- VIII. To monitor and follow-up with the Government of Turkey on the compliance with the assessments made by the Expert Council on NGO Law<sup>301</sup> regarding the compatibility of the amendments to the Law on Associations with European standards.

### **Recommendations to the European Union:**

*To the European Parliament's Delegation to the EU-Turkey Joint Parliamentary Committee:*

- I. 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 in Turkey on the work of civil society and HRDs, to follow up on its previous resolutions<sup>302</sup> and the recommendations issued therein, and to address these issues in the context of the EU Turkey Delegation's ongoing dialogue with the National Assembly of Turkey.

*To the European Parliament's Committee on Foreign Affairs and Subcommittee on Human Rights:*

- II. To continue to organise country visits and follow-up visits to document the situation of civil society and HRDs, particularly the challenges that they face in relation to freedom of association, assembly and expression, and to issue further statements and reports on the issue;
- III. To actively follow-up the recommendations to other EU institutions issued in previous European Parliament resolutions – such as the request to continue to bring up the situation of HRDs, lawyers, journalists, academics, and other civil society actors subjected to arbitrary detention in exchanges with the authorities in Turkey – through the organisation of regular exchanges of views with the European External Action Service and the European Commission.

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300 See in particular, ECtHR Grand Chamber, *Selahattin Demirtaş v. Turkey* (No. 2), Application no. 14305/17 (December 22, 2020).

301 Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, *CONF/EXP(2020)2*, Opinion on the Compatibility of Amendments to the Turkish Law on Associations with European Standards (April 2020).

302 European Parliament ("EP") resolution of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience (2021/2506(RSP)); EP resolution of September 19, 2019 on situation in Turkey, notably the removal of elected mayors (2019/2821(RSP)); EP resolution of March 13, 2019 on the 2018 Commission Report on Turkey (2018/2150(INI)); EP resolution of 8 February 2018 on the current human rights situation in Turkey (2018/2527(RSP)); EP resolution of October 27, 2016 on the situation of journalists in Turkey (2016/2935(RSP)).

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To the European Commission and the European External Action Service:

- IV. To regularly monitor respect for the rights to freedom of association, assembly, and expression, and its impact on civil society and HRDs in Turkey, as part of their monitoring as part of their monitoring of the progress on 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 fundamental rights;
- V. To raise concerns regarding the shrinking civic space in Turkey, including the restrictions on freedom of association, assembly, and expression, 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;
- VI. To maintain the *de facto* suspension on accession negotiations, and to refrain from resuming the process and considering further accession chapters until the Government of Turkey provides sufficient guarantees that it will adopt reforms and measures to address concerns regarding the respect for the rule of law and fundamental rights, including the rights to freedom of association, assembly, and expression, and shrinking civic space; to that end, develop a roadmap with clear benchmarks, including for instance the implementation of ECtHR rulings;
- VII. To conduct a public and comprehensive review of the European Commission's budget support to Turkey and ensure that EU funds do not contribute to human rights violations, including the funds channeled through the agreement between the EU and Turkey on migration<sup>303</sup>; to continue calibrating bilateral financial assistance to Turkey in a way that benefits the population at large, notably by directing it to civil society and HRDs; to ensure meaningful involvement of local and international civil society and HRDs in all aspects of EU-Turkey relations, including in the fields of migration and counterterrorism;
- VIII. To support civil society in Turkey and stand alongside targeted individuals and organisations, including by ensuring that resources are available to civil society organisations and HRDs active on democracy, the rule of law, and human rights, including emergency funding and other rapid response measures and protection mechanisms for civil society organisations and HRDs at risk;
- IX. To review the EU's counterterrorism cooperation with Turkey to ensure that it does not contribute to facilitating human rights violations, in particular by cracking down against civil society actors and HRDs;
- X. 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; to promote the adoption of a universally recognised definition of terrorism in multilateral fora in order to prevent the use of overly broad definitions against HRDs;
- XI. To promote the improvement of the Financial Action Task Force framework through supporting the launch of a new review cycle of the interpretative note on recommendation 8 in order to introduce safeguards to protect freedom of expression and freedom of association by ensuring independent civil society and HRDs are not harassed, arrested, prosecuted, or otherwise targeted under the pretext of the fight against terrorist financing abuse.

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<sup>303</sup> European Council, EU-Turkey Statement, Press release, [144/16](#), 18 March 2016

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*To the EU Delegation in Ankara:*

- XII. To ensure full implementation of the EU Guidelines on Human Rights Defenders, including through close monitoring of the cases of HRDs 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:*

- XIII. To enhance scrutiny by the EU on the issue of shrinking civic space in Turkey, in particular on the impact that the emergency measures and other recent legislation have had on the rights to freedom of association, assembly, and expression of civil society and HRDs; to publicly and collectively condemn the shrinking civic space in Turkey, both collectively as EU members and bilaterally in their diplomatic relations with Turkey;
- XIV. 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 their own and the EU's international obligations with regards to the human rights of people on the move; 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 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 guarantee sufficient standards for human and migrants' rights protection;
- XV. To provide necessary protection and support to civil society actors and HRDs, including by issuing emergency visas for the relocation of HRDs at risk.

**Recommendations to the OSCE:**

*To the OSCE Parliamentary Assembly:*

- I. 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 in Turkey on the work of civil society and HRDs, and to follow up on its previous resolutions, including by issuing new ones including specific recommendations in this regard.

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

- II. To monitor the implementation of the OSCE ODIHR joint guidelines on freedom of association<sup>304</sup> 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;
- III. 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;
- IV. To publicly and promptly react to attacks against HRDs and violations of their rights in Turkey, and to monitor the implementation of the OSCE ODIHR Guidelines on the Protection of HRDs<sup>305</sup> by Turkey.

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304 OSCE & ODIHR, Joint Guidelines on Freedom of Association (2015). Available at: <https://www.osce.org/odihr/132371>.

305 OSCE & ODIHR, Guidelines on the Protection of Human Rights Defenders (2014). Available at: <https://www.osce.org/files/f/documents/c/1/119633.pdf>.

### c. To International NGOs and International Donors

- I. To develop and/or consolidate their network and communications with civil society actors and HRDs in Turkey who are more isolated and less connected to the international community;
- II. To organise capacity building activities which respond to the needs and interest of civil society actors and HRDs, including on issues such as financial sustainability, grants management, and well-being; and to assist them in building internal expertise and in developing institutional policies and practices in those areas;
- III. 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 experience barriers in accessing such resources due to their limited international connection, language skills, professional human resources, and other reasons;
- IV. To ensure that the requirements provided under the grants and other types of support programmes match the reality on the ground 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;
- V. To engage in dialogue with the authorities in Turkey with a view to ending the stigmatisation and criminalisation of civil society organisations for receiving foreign funding and other types of resources from external partners.



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**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 and 31 branches and 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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## 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](mailto: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