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TURKEY

A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society



July 2020



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Cover photo: A placard reads 'We are in rebellion for freedom' while women shout slogans as the anti-riot police officers try to push them back during a rally marking International Women's Day on Istiklal avenue in Istanbul on March 8, 2019. Istanbul police fired tear gas at thousands of women who took to the city's central avenue on International Women's Day on March 8 in defiance of a protest ban to demand greater rights and denounce violence. © Ozan KOSE / AFP

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I - INTRODUCTION

A. About this Report

Two years have passed since the end of the two-year-long emergency rule, yet fundamental rights and the rule of law in Turkey remain under siege. The crackdown on civil society is reported to continue unabated, and the international community is inundated with regular reports of human rights defenders ("HRDs"), journalists, 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 prone 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 well-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, association, and expression, remain under threat. Ongoing blanket bans on assemblies, stigmatisation of civil society actors, police violence and impunity, as well as judicial harassment of peaceful protesters and activists, expose the serious restrictions on freedom of assembly, and the obstacles faced by HRDs and all people in Turkey in exercising this right. Moreover, the closing down of human rights organisations by emergency decrees, along with the judicial harassment and detention of high-profile civil society actors for their legitimate human rights activities, reinforce the concerns around the meaningful exercise of freedom of assembly and association.

This report ("Report"), the first in a short series that will be published throughout 2020 by the Observatory for the Protection of Human Rights Defenders ("the Observatory" – a joint programme of FIDH (International Federation for Human Rights), and OMCT (World Organisation Against Torture)), aims to document the situation and 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 assembly, the Report aims to draw conclusions and recommendations for decision-makers at both the national and the international level, including international organisations, human rights protection bodies, and international donors, on how to better support civil society and HRDs in Turkey. While this first Report focuses on the right to freedom of assembly and its impact on the work of civil society in Turkey, the second report will focus on the right to freedom of association and examine the challenges faced by civil society organisations and HRDs due to an increasingly constricted civic space in the country.

B. Methodology

The Report is based on desk research; information gathered by FIDH's member organisations in Turkey, the İnsan Hakları Derneği ("IHD" – Human Rights Association) and the Türkiye İnsan Hakları Vakfı ("TIHV" – Human Rights Foundation of Turkey); and 14 interviews conducted with civil society representatives based in Turkey, including human rights organisations, trade unions and other professional associations, and with international actors operating in Turkey. Within the scope of this research, FIDH also conducted an interview with the Ombudsman Institution of Turkey, while our request for a meeting with the Ministry of Justice was left unanswered. The interviews, which would normally have taken place via in-person meetings in Turkey, have been conducted instead through an online platform due to travel restrictions related to the Covid-19 pandemic, at the time scheduled for the investigation. Local interviewees were selected, in consultation with FIDH's member organisations, in such a way as to ensure geographical balance, as well as diversity in the human rights issues they are 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, and the rights violations occurring in the South-East of Turkey. In addition, FIDH sought to strike a balance between the large-scale organisations monitoring human rights violations in Turkey and grassroots organisations and movements that have been affected first-hand by the crackdown. During the interviews, FIDH also strove to capture the latest adverse impacts of the Covid-19 pandemic and related measures on the activities of civil society and HRDs.

The desk research was built on FIDH's and its member organisations' ongoing monitoring and documentation activities 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 framework of the three-year EU-funded programme "Comprehensive Support to Human Rights Defenders in Turkey," which FIDH manages together with an international NGO Consortium 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 the individuals, institutions, and organisations who agreed to share their views and analysis with us.

II - CONTEXT

A. Weakening Democratic Institutions in the Aftermath of the Attempted Coup

The crackdown on civil society in Turkey in recent years was marked by three key events: firstly, the Gezi Park protests in 2013,¹ secondly, the collapse of the peace process between the Government and the PKK (the Kurdish Workers' Party – an armed Kurdish group listed as a terrorist organisation by Turkey, the European Union, and the North Atlantic Treaty Organization) in 2015² and thirdly, the attempted coup in July 2016.³ Although different segments of civil society suffered from governmental repression long before 2013, the crackdown intensified following each of these events and rapidly escalated, reaching an alarming level after the attempted coup on July 15, 2016. 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 being lifted on July 18, 2018. The state of emergency granted extraordinary powers to the Executive, and Turkey went through an exceptional period during which the rule of law was set aside. After declaring the state of emergency, Turkey also submitted a formal notice of derogation from the European Convention on Human Rights ("ECHR") to the Secretary-General of the Council of Europe, as foreseen under Article 15 of the Convention.⁴

During the emergency rule, the Executive ruled the country with emergency decrees, which – by their nature – fell outside the scrutiny of the Constitutional Court, even in cases not directly related to the emergency rule.⁵ The lack of judicial control was widely abused by the Executive, and the emergency decrees were used to regulate many areas that went far beyond the scope of the emergency. In other words, the Government exercised a *de facto* monopoly over legislative power during this period, by ruling the country through emergency decrees exempt from any democratic oversight. Additionally, the requirement to submit the emergency decrees for the National Assembly's approval within 30 days was not followed,

1 The Gezi Park protests began on 28 May 2013 to protect Gezi Park against the construction of a replica of 19th century Ottoman barracks, 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 here: <https://www.amnesty.org/en/documents/EUR44/022/2013/en/>.

2 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>.

3 "On Friday 15 July, a Turkish military faction declared a coup attempt and martial law, closing Istanbul's bridges, airports, the Turkish parliament and some police stations. Turkish military claimed to have taken power to restore constitutional order, democracy and human rights. In response, President Recep Tayyip Erdoğan urged people to take to the streets to protest against the coup. Parliament was struck by at least one bomb and media reported clashes, surrenders and chaos. 290 people lost their lives and another 1,440 are reported to have been injured across the country." See, FIDH, FIDH condemns coup attempt in Turkey and calls for response which respects the rule of law and human rights (July 19, 2019). 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>.

4 Council of Europe, Secretary General receives notification from Turkey of its intention to temporarily suspend part of the European Convention on Human Rights, Ref. DC 132 (2016). Available at: <https://rm.coe.int/168071f08e>.

5 Following the institution of the state of emergency, in October 2016, the Constitutional Court overturned its previous jurisprudence establishing that the Court may examine the constitutionality of emergency decrees only to the extent that they go beyond the scope of the state of emergency *ratione temporis* and *ratione loci*. See, European Commission For Democracy Through Law ("Venice Commission"), Opinion no. 865 /2016 on Emergency Decree Laws nos. 667-676 adopted Following the Failed Coup of 15 July 2016, p. 41, para. 180-190 (December 12, 2016). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e).

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further bypassing parliamentary control.⁶ They were later submitted to the National Assembly in bulk and passed on the same day, without allowing enough time for any meaningful discussion, or for consultation with stakeholders and the opposition.⁷

During this period, a total of 36 emergency decrees were issued, leading to more than 1,000 amendments to existing legislation in areas that were not directly related to the emergency rule, including the judiciary, education, social security, media, internal security, national defence, the public employee regime, economy, and administrative structure.⁸ For those reasons, multiple sources suggest that the extraordinary powers granted to the Executive by the state of emergency were used in ways that far exceeded its purpose, but that rather gave the Government *carte blanche* to silence and harass the opposition and all dissenting voices.

Although the state of emergency was eventually lifted in July 2018, many of the emergency decrees stayed in place and had by then already been integrated into ordinary law. As a result, today the Executive has retained a significant number of exceptional powers.⁹ Furthermore, following the adoption of the so-called "Turkish type presidential system"¹⁰ as a result of the constitutional referendum of April 2017, the powers of the Executive branch further increased to the detriment of other counter-powers. The new governmental system also failed to ensure judicial independence from the political power, thus concentrating many crucial powers in the hands of the Executive.¹¹

B. Erosion of the Rule of Law

In today's Turkey, there are serious concerns that the rule of law has been substantially eroded and that democratic checks and balances, particularly the judiciary, have been significantly undermined. Not only are the members of the judiciary indirectly appointed by the political power, but there are no guarantees allowing judges to make independent judgments once they take office. The state of emergency offered the political power a pretext to further attack the judiciary. By March 20, 2018, four months prior to the lifting of the state of emergency, a total of 4,279 judges and prosecutors had been dismissed from office by order of the Council of Judges and Public Prosecutors ("Council").¹² In addition, on April 16, 2017, the Council, which is to decide on the appointment, dismissal, discipline, and relocation of judges and prosecutors, was reconstructed via a constitutional referendum. Already redesigned several times throughout the long tenure of the Justice and Development Party ("AKP" - *Adalet ve*

6 Human Rights Joint Platform ("IHOP" – *İnsan Hakları Ortak Platformu*), Atipik KHK'ler ve Daimi Hukuksuzluk: Artık Yasaları İdare mi İptal Edecek?, pp. 1-2 (March 2018). Available at: https://www.ihop.org.tr/wp-content/uploads/2018/03/Atipik_OHAL_-KHKleri-1.pdf.

7 IHOP, Atipik KHK'ler ve Daimi Hukuksuzluk: Artık Yasaları İdare mi İptal Edecek?, pp. 1-2 (March 2018). Available at: http://www.ihop.org.tr/wp-content/uploads/2018/03/Atipik_OHAL_-KHKleri-1.pdf.

8 See, When State of Emergency Becomes the Norm: The Impact of Executive Decrees on Turkish Legislation (March 2018). Available at: https://tr.boell.org/sites/default/files/ohal_rapor_ing_final_version.pdf.

9 For more information, see, IHD, 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>.

10 The "Turkish type presidential system" was criticised for concentrating power in the hands of the president without establishing adequate checks and balances. Under this system, the position of prime minister is abolished, the president is vested with the power to legislate through presidential decrees, and parliamentary control over the president's power is weakened. For more information see, Human Rights Watch, Questions and Answers: Turkey's Constitutional Referendum (April 4, 2017). Available at: <https://www.hrw.org/news/2017/04/04/questions-and-answers-turkeys-constitutional-referendum>. Also see, Council of Europe Venice Commission, Opinion on the Amendments to the Constitution Adopted by Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017 (March 13, 2017). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)005-e).

11 For more information about the constitutional amendment see, Türkiye Barolar Birliği, Anayasa Değişikliği Teklifinin Karşılaştırmalı ve Açıklamalı Metni (January 2017). Available at: http://anayasadegisikligi.barobirlik.org.tr/Anayasa_Degisikligi.aspx.

12 IHOP, 21 Temmuz 2016-20 Mart 2018 Olağanüstü Hal Uygulamaları: Güncellenmiş Durum Raporu, p. 40 (April 17, 2018). Available at: http://www.ihop.org.tr/wp-content/uploads/2018/04/Ola%C4%9Fan%C3%BCst%C3%BC-Hal_17042018.pdf.

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Kalkınma Partisi) to ensure its dependence on the political power, the Council in its latest and current form is comprised of 13 members, which include the Minister of Justice and the Undersecretary of Justice. The other members are appointed by the President and the National Assembly, which are basically controlled by the same political party.¹³

In response to ongoing criticism by national and international actors regarding the judiciary in Turkey, the Judicial Reform Strategy ("Strategy") was released on May 2019 by the Ministry of Justice.¹⁴ Although it was initially perceived as a small step forward, many civil society actors criticised the Strategy for not addressing the judiciary's structural problems and proposing short term and merely on-paper solutions.¹⁵ Indeed, the Strategy did not propose any changes relative to the independence of the judiciary from the political power. The whole process was also criticised by civil society and the opposition for not being participatory from the beginning, and for failing to address many substantial areas that would require legislative as well as constitutional change.¹⁶ Despite the criticism, the first set of legislative amendments comprised of 39 articles to implement the Strategy was adopted by the Parliament on October 17, 2019, and entered into force on October 24, 2019.¹⁷ However, even the very limited positive changes foreseen in the Strategy were not properly implemented.¹⁸ Despite its commitments to enhance free speech and limit arbitrary detention, judicial harassment and the arbitrary detention of human rights defenders, civil society actors, and journalists continued in the following period, which confirmed fears that the Strategy was no more than a commitment on paper.

After the end of the emergency rule, the expectations of an easing of the crackdown on civil society were not met. Despite a few welcome developments, including the release of a few detained high-profile human rights defenders,¹⁹ as well as a few Constitutional Court

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13 Yaman Akdeniz & Kerem Altıparmak, Turkey: Freedom of Expression in Jeopardy: Violations of the Rights of Authors, Publishers and Academics under the State of Emergency, p. 10 (March 2018). Available at: <https://www.englishpen.org/posts/news/turkey-freedom-of-expression-in-jeopardy/>.

14 Republic of Turkey Ministry of Justice, Judicial Reform Strategy (May 2019). Available at: https://www.yargireformu.com/images/YRS_ENG.pdf.

15 See, Cezasızlıkla Mücadelede Güç Birliği Ağı, Yargı Reformu Strateji Belgesine İlişkin Ortak Görüş (May 2019). Available at: <https://www.esithaklar.org/2019/07/30-mayis-2019-tarihli-yargi-reformu-strateji-belgesine-iliskin-ortak-gorus/>.

16 See, Cezasızlıkla Mücadelede Güç Birliği Ağı, Yargı Reformu Strateji Belgesine İlişkin Ortak Görüş (May 2019). Available at: <https://www.esithaklar.org/2019/07/30-mayis-2019-tarihli-yargi-reformu-strateji-belgesine-iliskin-ortak-gorus/>.

17 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.

18 In line with the Strategy, Law no. 7188 provided changes in areas such as prolonged pre-trial detention, criminalisation of free speech, and the return of the passports of the public officials dismissed by emergency decrees, along with other areas such as the entrance exam for the legal profession, and accelerated legal procedures. The current versions of Law no. 7188 did not meet the expectations of institutional change in the judiciary of Turkey by various groups, and it was not considered a reform. For instance, for the enhanced protection of freedom of speech, Law no. 7188 does not go further than adding 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 "terrorist propaganda" of the Anti-Terror Law. The current version of the article, if read in line with the fundamental human rights protected by the Constitution of Turkey, could already be easily interpreted in a way to protect the free speech of individuals, and many civil society actors agree that the problem lies within the restrictive interpretation and application of existing laws rather than the text of legislation. For this reason, many civil society actors considered that the changes were only cosmetic, and called for institutional change that would resolve the issue of judicial dependence on the political power. 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 "ICJ" & 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/>.

19 Amnesty Turkey's Chair Taner Kılıç was released pending trial in August 2018 after spending more than a year in prison. In the Büyükada case, 11 HRDs face terrorism-related charges for organising/participating in an information security workshop. On July 3, 2020, the Court acquitted seven HRDs while it convicted four on terrorism related charges. See Amnesty International, Turkey: Amnesty Turkey's Chair released after more than a year behind bars (August 15, 2018). Available at: <https://www.amnesty.org/en/latest/news/2018/08/turkey-amnesty-turkeys-chair-released-after-more-than-a-year-behind-bars>. For the most recent developments on

..... judgments²⁰ acknowledging certain rights violations, Turkey did not make a significant shift towards a democratic society, and the crackdown has continued. Today, many civil society actors still believe that Turkey is living through a *de facto* state of emergency, where the fundamental tenets that characterise consolidated democracies based on the rule of law have been set aside.

C. Shrinking Civic Space

In today's Turkey, the crackdown on human rights and civil liberties continues at an alarming pace, and the space for civil society has narrowed dramatically since 2013. The freedom of speech of opposition politicians, journalists, human rights defenders, and all those who criticise the Government's policies is under constant attack, and dissenting voices continuously face judicial harassment on various grounds for the exercise of this right. The crackdown on freedom of speech inevitably affects the exercise of other fundamental rights essential to the functioning of a healthy civil society, which in turn is a fundamental safeguard of democracy. It also exercises a chilling effect on civil society, thus fundamentally curbing pluralism and crushing dissent.

The restrictions on freedom of assembly and association should be read against the backdrop of a weakening rule of law and judicial independence, and a general lowering of human rights standards in Turkey. In recent years, the freedom of assembly has been rendered ineffective through restrictions and abusive practices by the authorities, and freedom of association has been severely restricted to the point of stigmatising and marginalising all independent civil society organisations, hindering their work, and, in some cases, threatening their very existence.

The state of emergency indeed had devastating impacts on the freedom of association. As of March 20, 2018, 1,419 associations, including human rights associations, 145 foundations, and 174 media entities had been closed down by emergency decrees for their alleged connections to terrorist organisations and for threatening national security.²¹ The assets of the closed-down organisations were confiscated by the authorities without any compensation. Those numbers continued to increase until the end of the emergency rule in July 2018. 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 HRDs had a chilling effect on the others. Many started to live in constant fear of being closed down and of their members being investigated or prosecuted, and had to adjust their activities to the restrictive conditions and potential security risks. This 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. Simultaneously, prominent civil society actors were

..... July 3, 2020 please see, The Observatory, Urgent Appeal on 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>.

20 The Constitutional Court of Turkey ruled on July 26, 2019, in a majority decision, that "terrorist propaganda" charges against the Academics for Peace violated their right to freedom of speech. In January 2016, more than 1,000 academics had published a statement "We will not be a party to this crime" as part of Academics for Peace Initiative, calling for the restarting of peace negotiations between the armed Kurdistan Workers' Party (PKK) and the Government, and criticising military operations in the South-East of Turkey. They were later criminalised and judicially harassed for their action. See, Bianet, Constitutional Court: Freedom of Expression of Academics for Peace Violated (July 26, 2019). Available at: <https://m.bianet.org/english/law/210934-constitutional-court-freedom-of-expression-of-academics-for-peace-violated>.

21 IHOP, 21 Temmuz 2016-20 Mart 2018 Olağanüstü Hal Uygulamaları: Güncellenmiş Durum Raporu, p. 45 (April 17, 2018). Available at: http://www.ihop.org.tr/wp-content/uploads/2018/04/Ola%C4%9Fan%C3%BCst%C3%BC-Hal_17042018.pdf.

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subjected to criminal and administrative investigations,²² prosecuted, and, in many instances, convicted and detained for their legitimate human rights activities.²³

These restrictions, and the state of freedom of association in Turkey, will be further examined in the second part of this report, expected to be issued before the end of 2020.

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22 For instance, in 2016 IHD and TIHV were subjected to administrative investigations, which was perceived as a retaliation for their human rights work, and they received administrative fines. Administrative investigations are reportedly more and more used as a tool to put pressure on civil society. For more information, please see, IHD, Special Report: Increased Pressure on HRDs, İHD 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>.

23 For examples of emblematic cases of judicial harassment against civil society actors in Turkey, see, Front Line Defenders, Turkey: Detention of 10 human rights defenders (July 5, 2017). Available at: <https://www.frontlinedefenders.org/en/case/istanbul-10-released-turkey>; Keep the Volume Up for Rights Defenders in Turkey, Osman Kavala (May 20, 2020). Available at: <https://www.sessizkalma.org/en/defender/osman-kavala-2>. In the Büyükada Case, also known as İstanbul 10 and Taner Kılıç's case, on July 3, 2020, the Court acquitted seven HRDs while it convicted four on terrorism-related charges, and pronounced prison sentences from two years and one month to six years and three months.

III - FREEDOM OF ASSEMBLY

A. General

*"In 2015, we were already describing the freedom of assembly as non-exercisable, but in the current situation this is even more accurate."*²⁴

The freedom of assembly has long been heavily restricted in Turkey. In the period following the Gezi Park protests in 2013, the public space became less and less accessible to those who wanted to organise peaceful demonstrations to express dissent, particularly towards the Government's oppressive policies, and free speech rights deteriorated. The situation escalated until the state of emergency was declared, striking a final blow to freedom of assembly.

Over the years, the authorities not only deterred peaceful protesters from exercising their right through police violence and judicial harassment, but also imposed restrictions on the right through pre-emptive bans on public gatherings, well before people took to the streets. Restrictive and vaguely-worded laws allowed the authorities to impose disproportionate measures to restrict freedom of assembly, and to stigmatise even the legitimate exercise of this right through a discourse that consistently associates protesters with extremism and violent groups. Attempts to organise public gatherings of any nature, by activists and human rights defenders from various backgrounds, are often prevented on grounds such as public safety and security, public morality, or prevention of crime, without demonstrating the necessity and proportionality of the measures taken, as required when limiting this right under domestic and international law. Different groups of protesters, including trade unionists, lawyers, peace activists, students, LGBTI+ people, women, as well as public sector employees who were dismissed from their positions by emergency decrees, have thus faced smear campaigns, criminalisation, judicial harassment, police violence, and even detention for the legitimate exercise of their right to freedom of assembly. As a result, today many people in Turkey express fear of claiming the public space to exercise their right to peaceful assembly.

B. Challenges Regarding the Legislative Environment

B.1. Enabling Constitutional Framework and International Standards

*"We can say that Article 34 of the Constitution is suspended."*²⁵

Article 34 of the Constitution of Turkey, in line with international standards, recognises the right to freedom of assembly and says that "everyone has the right to hold unarmed and peaceful meetings and demonstrations without prior permission." Turkey is also 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 assembly. Additionally, Article 5 of the United Nations Declaration on HRDs²⁶ reiterates that everyone has the right to assemble peacefully "for the purpose of promoting and protecting human rights and fundamental freedoms."

As the European Court of Human Rights ("ECtHR") and other international and regional human rights protection mechanisms have underlined on multiple occasions, the freedom of assembly is one of the foundations of a democratic society, along with the freedom of speech, and it should not be interpreted restrictively by the States.²⁷ According to both Article 11 of

²⁴ FIDH Online Interview no. 3 in May 2020 with a civil society representative.

²⁵ FIDH Online Interview no. 3 in May 2020 with a civil society representative.

²⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

²⁷ ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 6, para. 1 (December 31,

the ECHR and Article 21 of the ICCPR, restrictions on freedom of assembly are not allowed in cases other than those prescribed by the law, and that are necessary in a democratic society in the interest of national security or public safety, prevention of disorder and crime (only in the ECHR), public order (only in the ICCPR), the protection of public health or morals, or the protection of the rights and freedoms of others.

More specifically, in line with the criteria developed by the ECtHR over the years, the restrictive measures adopted by the authorities must answer a "pressing social need" and be proportionate to the "legitimate aim," and the reasoning by the national authorities to justify the restrictions must be "relevant and sufficient".²⁸ In accordance with the proportionality principle, a balance must be struck between the pursued aim and the free expression of the participants in an assembly.²⁹ The least restrictive means of achieving a legitimate aim should always be given preference, and banning or prohibiting an assembly should always be the last resort, as expressed by the Council of Europe Venice Commission and the Organisation for Security and Cooperation in Europe ("OSCE") in their guidelines.³⁰

Furthermore, States must not only refrain from imposing unreasonable restrictions on the right to freedom of assembly, but are also under the positive obligation to secure the effective enjoyment of that right, especially for those who hold unpopular views and may be subject to violence and victimisation.³¹ This positive duty includes facilitating assemblies at the organiser(s)'s preferred location and within "sight and sound" of the intended audience, as well as the protection of right-holders from third party individuals who seek to undermine the exercise of the right.³²

B.2. Restrictive Legislative Environment

*"I think that the biggest challenge to the exercise of freedom of assembly is the Government. (...) I don't deny that the legislation is problematic, but even the rights recognised under the current laws are in an alarming situation in practice."*³³

Despite the enabling constitutional framework, the legislative framework grants excessive powers to the authorities in restricting the right to freedom of assembly, without adequate safeguards to prevent abuse of power by the authorities. Law no. 2911 on Assemblies and Demonstrations³⁴ ("Law no. 2911") entered into force in 1983 and went through substantial changes over the years, particularly during the European Union ("EU") accession negotiations, which started in 2005 and were effectively frozen in 2018.³⁵ Despite those amendments, Law no. 2911 still poses serious limitations on the right to freedom of assembly. Article 10 of Law no. 2911 requires that the organisers of both indoor and outdoor assemblies notify the authorities of the assembly at least 48 hours beforehand, in addition to other

2019). Available at: https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf; also see, Council of Europe Venice Commission & OSCE Office for Democratic Institutions and Human Rights, Joint Guidelines on Freedom of Peaceful Assembly, CDL-AD (2019) 017-e, 3rd edition, p. 9, para. 21 (July 8, 2019). Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e).

28 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 15, para. 64 (December 31, 2019).

29 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 15, para. 64 (December 31, 2019); ECtHR Grand Chamber, Kudrevičius and Others v. Lithuania, para. 142-144 (October 15, 2015).

30 Council of Europe Venice Commission & OSCE Office for Democratic Institutions and Human Rights, Joint Guidelines on Freedom of Peaceful Assembly, CDL-AD (2019) 017-e, 3rd edition, p. 11, para. 29 (July 8, 2019).

31 ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 11, para. 33-34 (December 31, 2019).

32 Council of Europe Venice Commission & OSCE Office for Democratic Institutions and Human Rights, Joint Guidelines on Freedom of Peaceful Assembly, CDL-AD (2019) 017-e, 3rd edition, p. 9, para. 22 (July 8, 2019).

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

34 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.

35 ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu Ekim 2015 – Kasım 2016, p. 8 (2016). Available at: <https://www.esithaklar.org/wp-content/uploads/2017/03/Toplant%C4%B1-G%C3%B6steri-Hakk%C4%B1-Raporu.pdf>.

procedural requirements. Furthermore, Article 6 of Law no. 2911 provides governors and district governors with the authority to determine locations and routes where assemblies are allowed to take place. It should be noted that this provision lacks a constitutional basis since the relevant paragraph of the Constitution on the administration's authority to determine the location and route was abolished in 2001.³⁶ Finally, governors and district governors are also entitled by Article 17 of Law no. 2911 to postpone assemblies for a maximum period of one month on grounds of national security, public safety, prevention of crime, protection of public health or morals, or the protection of the rights and freedoms of others. Governors and district governors may also ban an assembly if there is an evident and imminent risk of crime, and whether such risks exist is determined by the authorities on a discretionary basis.

Although at first sight these provisions do not appear to be in direct violation of international standards *per se*, their vague formulations, combined with the authorities' restrictive interpretations and abusive practices, provide immense room for the latter to postpone, or in most cases, to ban assemblies on abstract and uncertain grounds. The duty to notify the authorities of assemblies is implemented as a *de facto* permission mechanism, in outright violation of the Constitution of Turkey. In accordance with ECtHR jurisprudence, notification and even authorisation procedures for a public event do not normally constitute an interference with the essence of the right, as long as the purpose of these procedures is to allow the authorities to take reasonable and appropriate measures to ensure "the smooth conduct of any assembly, meeting or other gathering."³⁷ However, these should not represent "a hidden obstacle to freedom of peaceful assembly."³⁸ Contrary to the spirit of the Convention, as interpreted by the ECtHR, the above-mentioned provisions are instead used by the authorities to restrict or totally ban the right to freedom of assembly, as discussed below. According to our sources, in the majority of cases in Turkey, the authorities fail to provide any valid justification for the restriction or refusal to authorise an assembly, based on the identification of a specific risk associated with it among those prescribed by law as legitimate grounds for the right's limitation, but instead prohibit or constrain assemblies on totally abstract and uncertain grounds. Thus, the authorities fail in most cases to demonstrate that the measures meet the legal requirements of necessity and proportionality, and, in practice, impair the very essence of the right.

Law no. 2911 is not the only one that grants wide and discretionary powers to the authorities. Under the emergency rule, Article 11 of Law no. 2935 on the state of emergency³⁹ was the source of broad powers granted to the governors, restricting the freedoms of assembly and movement along with other freedoms, which had the potential to significantly affect civil society activities. Article 11/m allowed the governors to ban, suspend, and restrict outdoor as well as indoor assemblies, and to subject them to prior permission. According to the Article 11/b, the governors were also entitled to ban people from moving and assembling in certain areas and/or during certain times.

In accordance with Article 11/C of Law no. 5442 on Provincial Administration⁴⁰ ("Law no. 5442"), the governors are entitled to take all necessary decisions and measures to ensure peace and security, personal integrity, and public well-being within the district. This provision was amended on July 25, 2018, right after the end of the emergency rule, by Law no. 7145.⁴¹ The amendment was intended to ensure that the governors can maintain some

³⁶ ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu Ekim 2015 – Kasım 2016, p. 14 (2016).

³⁷ European Court of Human Rights, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 18, para. 84 (December 31, 2019); Sergey Kuznetsov v. Russia, § 42.

³⁸ European Court of Human Rights, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 18, para. 86 (December 31, 2019); Oya Ataman v. Turkey, § 38; Berladir and Others v. Russia, § 39.

³⁹ Law no. 2935 on State of Emergency (*Olağanüstü Hal Kanunu*) published in the Official Gazette no. 18204, dated October 27, 1983, and entered into force on the date of its publication.

⁴⁰ Law no. 5442 on Provincial Administration (*İl İdaresi Kanunu*) published in the Official Gazette no. 7236, dated June 18, 1949, and entered into force on July 31, 1949.

⁴¹ 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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of their exceptional powers in the post-state of emergency period. Among other restrictive provisions, the amendments vested governors with the power to ban any person from entering or leaving certain areas for a period of 15 days, as well as to restrict the freedom of movement and assembly in certain areas and/or during certain times. The broad powers under this provision allowed governors to ban many peaceful public assemblies and even indoor human rights events, thus adding to the other existing limitations provided in Law no. 2911.⁴² Those measures that were only in effect during the state of emergency, and may have been justified during exceptional circumstances, are indeed very similar in extent to the powers granted to the governors by Law no. 7145. For this reason, many civil society actors emphasised that a de facto state of emergency is still in effect in today's Turkey.

Despite the restrictive legislative framework, there is still room for the international standards to be implemented by the courts. 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 on the right to freedom of assembly, and places them above domestic law. While this provision is occasionally taken into account by the courts and an assessment made in accordance with international standards, this does not prevent the authorities from repeatedly violating the right to freedom of assembly in a context where the rule of law has been set aside and judicial independence has been progressively undermined. In the absence of effective and independent mechanisms to hold the authorities to account, the powers prescribed in the law are implemented in an abusive and arbitrary manner by the authorities, as will be further developed below.⁴³

C. Pre-Emptive Bans on Public Gatherings

C.1. General and Specific Bans

According to official sources, the right to freedom of assembly is well-protected and respected in Turkey. The National Report of Turkey for the third cycle of the United Nations ("UN") Universal Periodic Review ("UPR") states that:

Peaceful assemblies and demonstrations were held without any interference in the event of their conformity with the Constitution and national legislation. Accordingly, in 2018, 46,389 demonstrations, and in 2019 (as of October) 39,918 demonstrations were held. Law enforcement officials intervened in only 0.8% of them in 2018 and 0.7% of them in 2019 due to their inconformity with the legislation.⁴⁴

Despite the optimistic figures promoted by the authorities, a closer look at the situation raises concerns, at the very least, regarding the situation, given the discrepancy between those official figures and those gathered by civil society. Indeed, the organisations monitoring the situation on the ground report alarming numbers in stark contrast with the ones provided by the authorities, and signal that the actual number hidden behind those small percentages might not be negligible. According to the research conducted by the TIHV, between January 1, 2019 and January 31, 2020, authorities issued at least 147 decisions, in 25 cities, to ban all assemblies and events for a period ranging from 2 days to 395 days.⁴⁵ Furthermore, over the

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42 For a breakdown of legal grounds used by the authorities to impose bans on the right to freedom of assembly, see, ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu Ekim 2015 – Kasım 2016, p. 40 (2016); ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu 2017, pp. 19-20 (2018). Both available at: <https://www.esithaklar.org/yayinlar/>.

43 For a more detailed analysis of the legal framework, see, ICJ & IHOP, Restricted at Discretion: The Enjoyment of the Freedoms of Movement and Assembly in Turkey During and After the State of Emergency (September 2019). Available at: <https://www.icj.org/turkey-legal-framework-allows-for-arbitrary-restrictions-of-movement-and-assembly-warns-icj-briefing-paper/>.

44 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, para. 89. Available at: <http://www.mfa.gov.tr/data/ENFORMASYON/duyurular/upr-national-report.pdf>.

45 Human Rights Foundation of Turkey, 01 Ocak 2019 ile 31 Ocak 2020 Tarihleri Arasında Valilik Yasakları Nedeniyle



The Republic monument is surrounded by a police fence during the International Labour Day rally at Taksim in Istanbul, on May 1, 2020, as the country tries to curb the spread of the coronavirus. © Ozan KOSE / AFP

same period, at least an additional 64 decisions were issued to ban specific assemblies and events. Those figures indicate that the authorities officially prevent numerous assemblies before they can even take place, through general and specific bans. In addition, as will be further discussed below, the cases of police intervention and other forms of harassment against peaceful protestors signal that the small figures of police interference presented by the authorities should be carefully assessed.

“State officials respond in the international arena that thousands of demonstrations have taken place in Turkey, but we don’t know who were those demonstrators. When we go out to protest, we face bans and restrictions.”⁴⁶

In some cities, uninterrupted bans on all assemblies have lasted several months, or even years. Although Law no. 2911 allows governors to suspend assemblies for a maximum period of 30 days and Law no. 5442 allows them to restrict assemblies for a period of 15 days, in practice governors abuse their powers, which are already restrictive in nature. Governors often automatically extend an existing ban by imposing another ban at the end of the previous one, creating an uninterrupted ban for a period much longer than 30 days.⁴⁷ For instance, in the South-Eastern city of Van, a general ban on all public gatherings and events was first imposed on November 21, 2016. Since then, a new ban has been introduced by the authorities

Kullanılmayan Toplanma ve Gösteri Yapma Hakkı (February 9, 2020). Available at: <https://tihv.org.tr/01-ocak-2019-ile-31-ocak-2020-tarihleri-arasinda-valilik-yasaklari-nedeniyle-kullanilmayan-toplanma-ve-gosteri-yapma-hakki/>.

⁴⁶ FIDH Online Interview no. 10 in May 2020 with a civil society representative.

⁴⁷ TIHV, 01 Ocak 2019 ile 31 Ocak 2020 Tarihleri Arasında Valilik Yasakları Nedeniyle Kullanılmayan Toplanma ve Gösteri Yapma Hakkı (February 9, 2020).

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at the end of each previous one, and thus all public gatherings and events have been banned uninterrupted for 1,339 days at the time of publication, with the most recent ban introduced on July 6, 2020.⁴⁸

C.2. The Scope of Bans

Bans introduced by the authorities may cover a wide range of activities, including outdoor assemblies such as demonstrations, press statements, sit-ins, concerts, setting-up stands and tents, collecting signatures, and distributing leaflets and pamphlets, as well as indoor activities such as conferences, panels, exhibitions, plays, and film screenings. For instance, the above-mentioned uninterrupted ban in Van covers "all outdoor assemblies and activities in the city including demonstrations, outdoor meetings, press statements, sit-ins, setting-up stands, collecting signatures, concerts, festivals, and all other similar assemblies and events along with distributing and hanging leaflets, pamphlets or similar materials." Many civil society actors reported that their activities in Van were severely affected by the ban. Although the ban does not officially include indoor activities, the police have reportedly intervened in some instances to prevent or disrupt a private, indoor gathering.⁴⁹

Indoor assemblies and activities are also more and more restricted as part of general bans on assemblies, or they are banned by a specific decision of the authorities. For instance, the blanket ban on LGBTI+ assemblies and events in Ankara covered both indoor and outdoor assemblies,⁵⁰ and indoor activities such as film screenings were prevented on the basis of the blanket ban (see Box #3 below for more details). There are other examples of specific indoor events targeted by the authorities. A civil society actor reported that a concert organised by several civil society organisations in Izmir to show solidarity with members of the folk music band Grup Yorum, who were on a hunger strike to protest the unjust restrictions on their concerts,⁵¹ was banned by the Governorate on abstract and general grounds.⁵² The civil society actors organised a press conference to protest the ban, but this was also banned by the authorities. In an attempt to overcome the restrictions, the civil society organisations finally decided to organise the concert in a venue provided by the municipality, yet this did not prevent the authorities from banning this event too.

C.3. Grounds for Bans

Bans introduced by the authorities are rarely based on valid and lawful grounds, or on solid legal reasoning. They are usually abstract and generic, and almost a word-for-word copy of the grounds for restrictions provided in the law; concrete reasoning specific to the context is rarely found in the decisions to ban assemblies. The authorities' unwillingness to provide

48 TIHV, Documentation Centre Daily Human Rights Report. Available at: <https://en.tihv.org.tr/>. Also see, Governorate of Van, 06.07.2020 Tarihli Yasaklama Duyurusu (July 6, 2020). Available at: <http://www.van.gov.tr/06072020-tarihli-yasaklama-karari>.

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

50 Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 22 (February 27, 2019). Available at: <http://www.toplumsal hukuk.net/wp-content/uploads/2019/02/OHAL-RAPORU.pdf>.

51 In May 2019, Grup Yorum members announced that they would go on a hunger strike as of May 17 to protest the detention of its seven members, police raids on their cultural centre, a ban on their concerts, and the listing of some of their members as terrorists by the Ministry of the Interior. See, Bianet, Grup Yorum Band to Go on a Hunger Strike (May 14, 2020). Available at: <https://bianet.org/english/human-rights/208476-grup-yorum-band-to-go-on-a-hunger-strike>. In January 2020, two members turned their hunger strike into a death fast for an indefinite period. See, Cumhuriyet, Grup Yorum üyeleri ölüm orucuna başladı (January 20, 2020). Available at: <https://www.cumhuriyet.com.tr/haber/grup-yorum-uyeleri-olum-orucuna-basladi-1715342>. During this process, they were taken to the hospital from the prison against their will and then placed under house arrest. One of them, Helin Bölek, lost her life in April. The second member fasting to death, İbrahim Gökçek, announced in early May that he had ended the death fast in the wake of the Government's response to allow their concerts. Unfortunately, he died a few days after, on May 7, 2020. See, The Guardian, Second member of banned Turkish folk group dies after hunger strike (May 7, 2020). Available at: <https://www.theguardian.com/world/2020/may/07/second-member-banned-turkish-folk-group-grup-yorum-dies-hunger-strike--ibrahim-gokcek>.

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

any specific motivation before restricting a constitutionally-guaranteed fundamental right illustrates how deep-rooted arbitrary practices and non-respect for the rule of law are among those authorities. Some civil society actors believe that the identical reasonings used by various authorities are a signal that the bans are a result of a central policy imposed on the local authorities, rather than of a thorough and case-by-case assessment of the circumstances that would justify them.⁵³

In addition to the use of generic grounds such as "public safety and security," "prevention of crime," "protections of rights and freedoms of others," "public health," and "public morality," authorities cite many other abstract grounds, which do not find a legal basis in domestic or international law and could not possibly justify imposing restrictions on freedom of assembly in a democratic society.⁵⁴

The Government's pro-security policies are also reflected in the reasonings of bans. Many assemblies and events are banned on grounds such as "terrorists groups' activities," "prevention of crime," and "information received by the intelligence." In the aftermath of the deadly terror attack against peace activists in Ankara on October 10, 2015,⁵⁵ and the potential Islamic State of Iraq and Syria ("ISIS") threat against an LGBTI+ organisation,⁵⁶ the legitimate reason of reacting to a terrorist threat turned into a standard reasoning for the authorities, even years after those incidents and in circumstances that did not justify it. A civil society actor described the difficult position they were forced into in the following words:⁵⁷

The attack that resulted in the death of 102 people and injury of hundreds triggered the ban on demonstrations and divergence of those from central areas on the grounds that our security could not be ensured. Inability to ensure the security of the protestors became the most important reasoning for the restrictions. The loss of 102 people and the fact that we couldn't take the same risk again obliged us to accept the situation. Calling on the authorities to take the necessary measures to ensure security, also meant demanding more police presence. We were having a dilemma.

The attempted coup also reinforced the security-centred approach at the expense of fundamental rights. In the period following the terrorist attacks across Turkey and the attempted coup, rather than taking the necessary measures to ensure the security of protesters, the authorities embraced the language related to the potential security threats to crack down on peaceful assemblies. Similar to the other reasonings by the authorities, the alleged security threats mentioned in the bans were abstract and general.⁵⁸ In some cases, several terrorist

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

54 The authorities frequently used unreasonable motivations in their decisions. For instance, the following were used as part of the reasoning in some decisions to ban assemblies: "the locations for assemblies are being intensely used by citizens for their daily activities and also normal course of life can be affected due to heavy traffic in those areas," and in another decision, "such demonstrations can cause disturbance as citizens very often prefer to go to the parks considering the seasonal conditions." See, Vitrin Haber, Sinop Valiliği; OHAL'de açıklama yok (January 21, 2017) via Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 16 (February 27, 2019). Available at: <https://www.vitrinhaber.com/gundem/sinop-valiligi-ohalde-aciklama-yok-h18704.html>; also see, Governorate of Ankara, Toplantı ve Gösteri Yürüyüşleri Yasağı Hakkında Basın Duyurusu (August 2, 2017) via Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, pp. 20-21 (February 27, 2019). Available at: <http://www.ankara.gov.tr/toplanti-ve-gosteri-yuruyusleri-yasagi-hakkinda-basin-duyurusu>.

55 Washington Post, Bombs kill scores at peace rally in Turkey in sign of worsening instability (October 10, 2015).

56 See, LGBTI ERA, Turkish LGBT Organization Closes Offices Amid Security Concerns (April 2016). Available at: <https://www.lgbti-era.org/blog/turkish-lgbt-organization-closes-offices-amid-security-concerns>.

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

58 There follow some excerpts from the decisions of the authorities that served as "valid" grounds to ban assemblies: "Terrorist organisations' search for activities in the province in accordance with the intelligence received," past terror attacks in the province and the plans by "ISIS along with other left-wing groups to organise new terrorist actions through assemblies, demonstrations, meetings and press statements," "prevention of attacks by terrorist organisations through abusing fundamental rights and freedoms," and "the risk of undermining the fight against crime if the security forces are relocated to those areas." See, Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, (February 27, 2019). Available at: <http://www.toplumsalhukuk>.

organisations with different ideologies were listed together as the source of potential terrorist attacks.⁵⁹ In some others, the risk of wide-spread protests to contest the results of the 2017 referendum on the constitutional amendment was presented as a security threat,⁶⁰ while the potential of the planned activities to turn into terrorist propaganda was another ground for restrictions.⁶¹

This approach was also very clear in the bans related to LGBTI+ events and assemblies. As expressions of a segment of society which is particularly vulnerable to hate crimes and violence by different groups, assemblies and events organised by LGBTI+ groups may indeed require extra measures to be taken by the authorities in order to ensure their right to protest. Instead, the authorities used those security concerns as an “excuse” to crack down on LGBTI+ activities. Several assemblies and events organised by LGBTI+ groups in Ankara were banned by the authorities, and this process went to the extreme of imposing a blanket ban on LGBTI+-related activities. An LGBTI+ film screening, which was supposed to take place in November 2017, was banned in Ankara on the grounds that the film screening could “incite people to hatred and enmity,” that it “could pose a clear and imminent risk to public order for this reason,” and that “terrorist organisations were in search for terror acts against opposing groups according to the intelligence.”⁶²

Through the above-mentioned bans, founded on shaky and abstract grounds, authorities in Turkey not only violate the State’s positive obligation to facilitate the exercise of the right to freedom of assembly, but also directly infringe upon the essence of the right through general bans based on abstract grounds, that do not meet the requirements for any such restrictions to be lawful under domestic and international law. Further to that, the failure by the authorities to reasonably justify their decisions, coupled with the accompanying legal uncertainty, makes it difficult for the right-holders to challenge the decisions, thus essentially depriving them of an effective remedy against the violations of their right.

D. Other Restrictions Interfering with the Effective Exercise of the Right

D.1. Limitations on the Location of Assemblies

“In the current situation, “permitted” peaceful assemblies are prevented from reaching out to their target audience.”⁶³

In addition to total bans on assemblies, many civil society actors reported other arbitrary measures and restrictions on the exercise of the right to freedom of assembly. The restrictions on the location of an assembly is one of the major issues of controversy between the authorities and civil society actors. In line with international standards, organisers of an assembly,

[net/wp-content/uploads/2019/02/OHAL-RAPORU.pdf](http://www.karabuk.gov.tr/wp-content/uploads/2019/02/OHAL-RAPORU.pdf).

59 For example, see, Governorate of Karabük’s decision on 23 November 2016. Available at: <http://www.karabuk.gov.tr/kamuoyuna-saygi-ile-duyurulur>.

60 Part of the reasoning for imposing a general ban on assemblies in Çorum reads as follows: “The authorities were informed that left-wing and extreme groups and members of terrorist organisations call for assembly through social media with the aim of protesting the results of the referendum, that the referendum results would be protested through activities like making noises with pans, cooking pots and whistles, that those demonstrations may be kept alive until the May 1st, International Workers’ Day, by support of certain political parties, and that those demonstrations can be provoked by terrorist organisations to transform them into Gezi Park-like protests.” See, Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 16 (February 27, 2019). Available at: <http://www.toplumsal hukuk.net/wp-content/uploads/2019/02/OHAL-RAPORU.pdf>.

61 Part of the reasoning to impose a general ban on indoor and outdoor assemblies in Bitlis reads as follows: “the potential of the planned activities to turn into terrorist propaganda (...) and by reason of violent acts which can occur before or after the assemblies.” See, Governorate of Bitlis, Yasaklama Kararı (Önemli duyuru) via Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 32 (February 27, 2019). Available at: <http://www.bitlis.gov.tr/yasaklama-karari-onemli-duyuru>.

62 Governorate of Ankara, Yasaklama Kararına İlişkin Basın Duyurusu (November 15, 2017) via Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 22 (February 27, 2019). Available at: <http://www.ankara.gov.tr/yasaklama-kararina-iliskin-basin-duyurusu-15112017>.

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

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in principle, have the right to choose the location or route of an assembly, and, given the importance of the right to freedom of assembly in a democratic society, it should be regarded as a legitimate use of public space, like other more routine uses.⁶⁴ In this regard, authorities have a duty to facilitate assemblies rather than hinder the exercise of the right by imposing the location or route of an assembly.

As outlined above, Article 6 of Law no. 2911 provides governors and district governors with the authority to determine the location and route of assemblies. The authorities publish a list of designated locations and routes where assemblies, marches, and press statements are "permissible," in every district. Assemblies organised outside of those designated areas are deemed to be against the law, even if they are peaceful, and the police can disperse the crowd.⁶⁵ Mostly, attempts to organise anything outside those designated areas by the civil society fail.

Istanbul's Taksim Square is one such banned location, and possesses a symbolic meaning in the eyes of both civil society and the authorities. For decades, Taksim Square, located at the heart of the city, was the main address for assemblies and events. Its symbolic meaning for civil society is immense due to the emblematic events that have occurred at the square, including the Gezi Park protests in 2013 and the International Labour Day demonstrations of 1977, where at least 34 protesters were killed by gunfire and in the ensuing chaos.⁶⁶ In 2010, after a ban of almost 30 years on International Labour Day demonstrations at Taksim Square, the AKP Government re-opened the Square to those,⁶⁷ but shortly after, in 2013, the ban was reintroduced. Since the 2013 Gezi Park protests started in Taksim Square and turned into a nation-wide uprising, the Government has waged a war on all assemblies organised by its opponents around Taksim Square, and those have been met with police violence, tear gas, and rubber bullets.

Civil society actors further reported that beyond the symbolic meaning attributed by the authorities to Taksim Square, whose closure embodies the crackdown on the opposition, the ban is also a way of pushing the opposition and the civil society actors out of public sight.⁶⁸ The majority of the designated areas for assemblies and demonstrations in Istanbul, similar to many other cities, are far from the city centre, and symbolic locations like Taksim Square are not open to assemblies that are critical of the Government.⁶⁹ For the reading out of press statements, the designated areas in Istanbul are relatively more diverse, including some areas in central locations or in their close proximity, but again neither Taksim Square nor the adjacent İstiklal Street is listed as a designated area.⁷⁰ With assemblies taking place in such isolated locations, unless they are widely covered by the media it is very unlikely that anybody will be ever informed about the issue that is being protested. Considering the

64 Council of Europe Venice Commission & OSCE Office for Democratic Institutions and Human Rights, Joint Guidelines on Freedom of Peaceful Assembly, CDL-AD (2019) 017-e, 3rd edition, pp. 19-20, para. 61-62 (July 8, 2019). Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e); also see, ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 9, para. 20 (December 31, 2019). Available at: https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf.

65 Article 23/d and 24 of Law no. 2911.

66 BBC Türkçe, 1 Mayıs 1977: Yaşayanlar ve arşivler anlatıyor (April 30, 2014). Available at: https://www.bbc.com/turkce/haberler/2014/04/140430_1_mayis_1977.

67 CNN World, Turks mark first May Day in Taksim Square in 30 years (May 1, 2010). Available at: <http://edition.cnn.com/2010/WORLD/europe/05/01/turkey.may.day/index.html>.

68 Online interview no. 4 on May 13, 2020 with a civil society representative.

69 Please see Istanbul Governorate's notice on the designated areas in Istanbul for 2020, İstanbul Governorate, İstanbul'da 2020 Yılı Toplantı ve Gösteri Yürüyüş Alanları Duyurusu (February 7, 2020). Available at: <http://www.istanbul.gov.tr/istanbulda-2020-yili-toplanti-ve-gosteri-yuruyus-alanlari-duyurusu>.

70 According to the statement of the Governorate of Istanbul, dated October 31, 2019, on the areas designated for press statements, there are a total of 81 designated locations for meetings and press statements in Istanbul: three in Beyoğlu district, including Karaköy Square, the top of Şişhane parking garage, and in front of Odakule on Meşrutiyet Street, two in Beşiktaş district, including Atatürk Republic and Democracy Monument and Barbaros Square, and two in Kadıköy district, including in front of Süreyya Opera Building and in front of the Atatürk statue in the piers. The Governorate's statement is available at: <http://www.istanbul.gov.tr/basin-aciklamasi-yapilabilecek-alanlara-iliskin-basin-aciklamasi>.

deteriorating state of independent journalism in Turkey,⁷¹ freedom of assembly is a crucial way for civil society and opponents to reach out to the general public. Therefore, pushing assemblies and demonstrations out of public sight is a clear attack aimed at undermining freedom of assembly as well as freedom of speech.

Box #1 – Saturday Mothers/People's Weekly Vigils

Saturday Mothers/People is a group of human rights defenders, comprised of family members of those who were forcibly disappeared in Turkey in the 1980s and 90s. They began organising weekly vigils in 1995 at Galatasaray Square in the Beyoğlu district of Istanbul to seek information regarding the whereabouts of the victims of enforced disappearances and to demand justice for the victims and their families. After a 10-year break from the weekly vigils due to increasing police attacks, the vigils resumed in 2009 and have continued ever since.

On August 25, 2018 the initiative was about to mark its 700th week when the weekly vigil was banned by the Beyoğlu District Governorate.⁷² The police dispersed the vigil by force, using tear gas and rubber bullets, and 47 protestors were detained.⁷³ Subsequently, on August 27, 2018, the Ministry of Internal Affairs “justified” the use of force by the police on the ground that the mothers were “being exploited by terrorist organisations” and that those organisations were “using the concept of motherhood to create victimisation, masking terrorism and polarising society.”⁷⁴ Since then they have been banned from organising their weekly vigils at their original location, Galatasaray Square, where the vigils were staged peacefully for years. Saturday Mothers/People are now only allowed to read out a press statement in a much smaller street in Beyoğlu, outside the Human Rights Association’s Istanbul Office.

Similarly to Istanbul, Saturday Mothers/People in Diyarbakir had also been organising weekly vigils at Koşuyolu Park since 2009. On the 499th week, the vigil was banned only half an hour before its starting time.⁷⁵ What is more striking in this case is that the organisers were not only banned from staging weekly vigils at their original location, but also effectively banned from reading out a press statement outdoors.⁷⁶ As a result, they had to make the press statement inside the Human Rights Association’s offices in Diyarbakir. They had previously been banned from organising their weekly vigils outside during the state of emergency, and had continued their protests inside the Human Rights Association’s offices for 100 weeks.⁷⁷ Although their weekly vigils were allowed to take place in the original location following the lifting of the state emergency in July 2018, this second ban was imposed shortly thereafter. The intolerance towards the family members of those who disappeared in the 80s and 90s demonstrates how the concept of “terrorism” is stretched to include anyone who holds public authorities to account.

71 For a more detailed analysis of the media ownership in Turkey, see, Reporters without Borders & Bianet, Media Ownership Monitor Turkey. Available at: <http://turkey.mom-rsf.org/en/>.

72 For more information, please see, Front Line Defenders, Turkey: Saturday Mothers' weekly vigils must be allowed and their right to peaceful assembly guaranteed (August 31, 2018). Available at: <https://www.frontlinedefenders.org/en/statement-report/turkey-saturday-mothers%E2%80%99-weekly-vigils-must-be-allowed-and-their-right-peaceful>. IHD had filed a case to challenge the ban; there have not been any positive developments yet.

73 Bianet, Police Attacks Mothers with Plastic Bullet (August 27, 2018). Available at: <http://bianet.org/english/diger/200221-police-attack-saturday-mother-with-plastic-bullet>.

74 Bianet, Soylu: Eminönü'nde gezerken mi kayboldular? (August 27, 2018). Available at: <http://bianet.org/bianet/insan-haklari/200226-soylu-eminonu-nde-gezerken-mi-kayboldular>.

75 Sivil Sayfalar, Diyarbakır'da Cumartesi Anneleri'ne Sadece Meydan Değil Açık Hava da Yasak (September 11, 2018). Available at: <https://www.sivilsayfalar.org/2018/09/11/diyarbakirda-cumartesi-annelerine-sadece-meydan-degil-acik-hava-da-yasak/>.

76 FIDH Online Interview no. 2 in May 2020 with a civil society representative.

77 Evrensel, Diyarbakır'da yıl aradan sonra ilk Cumartesi Anneleri eylemi (July 21, 2018). Available at: <https://www.evrensel.net/haber/357441/diyarbakirda-2-yil-aradan-sonra-ilk-cumartesi-anneleri-eylemi>.



Emine Ocak, a member of Saturday Mothers/People, is detained by the riot police during a demonstration on August 25, 2018 in Istanbul. Istanbul police breaks up a regular demonstration by Saturday Mothers/People remembering the disappearance of relatives in the 1980s and 1990s, taking dozens in custody as they marked holding the 700th such weekly protest. © Hayri TUNC / AFP

Many civil society actors also reported that often the implementation of the restrictions related to location is arbitrary, and decided on the spot by the police depending on many different factors, such as the identity of the organisers, the issue being protested, the size of the group, and anything that the police consider relevant. They emphasized that there is no guarantee that assemblies in designated areas will always be permitted, nor, conversely, that assemblies outside those areas will be immediately dispersed. An assembly that was allowed to take place previously at the very same location could very well be banned subsequently by the authorities or the police.⁷⁸ This generates uncertainty among civil society actors as to the lawfulness of their activities, which in turn has a profound chilling effect on them.

D.2. Limitations Linked to Particular Issues

*"Anything with a potential to incite people to question the legitimacy of the Government is targeted."*⁷⁹

The question of whether an assembly will be subjected to restrictions is also closely linked with who the organisers are and what issue is being contested. A press statement organised by women's rights defenders concerning femicides may be allowed to take place under certain conditions, while a demonstration by the same group to show solidarity with public sector employees dismissed following the emergency decrees, due to terrorism allegations, may be

78 FIDH Online Interview no. 8 in May 2020 with a civil society representative; FIDH Online Interview no. 4 in May 2020 with a civil society representative.

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

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banned or criminalised.⁸⁰ Demonstrations and press statements on issues considered to be politically sensitive by the authorities are more likely to be banned and/or criminalised. And the list of red flag issues may include a wide range of public-interest matters, encompassing almost anything that holds governmental officials to account.

As reported by civil society actors, the Kurdish question and human rights violations in the South-East are notably untouchable subjects in the eyes of the authorities. In the aftermath of the dismissal of Peoples' Democratic Party ("HDP" - *Halkların Demokratik Partisi*) mayors in Diyarbakır, Van, and Mardin in August 2019, many protests were organised across Turkey to condemn these actions and their violation of democratic principles.⁸¹ By way of illustration, in August 2019, 60 out of 137 assemblies that faced police intervention were organised to address the dismissal of these mayors.⁸² Similarly, in September 2019, 113 out of 199 assemblies that faced police intervention were related to the dismissals.⁸³

*"A police intervention is almost inevitable for anything organised by the Kurdish civil society as if the police would commit a crime if they didn't intervene."*⁸⁴

Lawyers, trade unionists, women's rights defenders, and other civil society actors reported that the protests organised on the subject of the dismissed HDP mayors were immediately dispersed by the police, and excessive force was used. For instance, lawyers had been organising weekly assemblies called "Justice Watch," which had initially begun to protest against the detention of lawyers within the scope of the criminal case against *Cumhuriyet* newspaper.⁸⁵ They then turned into a more general call for justice, and those weekly assemblies and reading of press statements in front of the Istanbul Court House were mostly "tolerated."⁸⁶ However, the lawyers were not allowed to read a press statement in this same location on the dismissal of HDP mayors, and the police violently dispersed the lawyers when they tried to do so.⁸⁷

The Government's foreign military policy is another subject that cannot be criticised, partly due to its connections to the Kurdish question and the Government of Turkey's conflict with Kurdish armed groups in Syria. Following the Turkish military offensives in Syria, particularly

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

81 See, Bianet, Appointment of Trustees Protested, Police Intervene Against Protests in Van, Diyarbakır (August 19, 2019). Available at: <https://bianet.org/english/politics/211870-appointment-of-trustees-protested-police-intervene-against-protests-in-van-diyarbakir>.

82 ESHID, Barışçıl Toplantı ve Gösteri Hakkı Bülteni Nisan-Eylül 2019, p. 3. Available at: https://www.esithaklar.org/wp-content/uploads/2019/11/toplanti_ve_gosteri_hakki_izleme_2019_nisan_eylul-1.pdf.

83 ESHID, Barışçıl Toplantı ve Gösteri Hakkı Bülteni Nisan-Eylül 2019, p. 3.

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

85 On October 31, 2016, numerous journalists and directors of the *Cumhuriyet* newspaper were arrested within the scope of an investigation, on accusation of "committing crimes on behalf of terrorist organisations despite not being a member," by virtue of the newspaper's publications allegedly legitimising the attempted coup. On November 5, nine of those who were arrested were detained by the court. In the trial that ensued, 19 journalists and directors of the newspaper were prosecuted, and the court sentenced 14 of them to imprisonment. Eventually the Court of Cassation overturned the sentences given to some of the defendants, but the lower court resisted implementing the high court's decision. The case remains ongoing. For more information, see, Human Rights Watch, Turkey: Journalists Convicted for Doing Their Jobs (27 April, 2018). Available at: <https://www.hrw.org/news/2018/04/27/turkey-journalists-convicted-doing-their-jobs>; see, Expression Interrupted, Mustafa Kemal Güngör. Available at: <https://expressioninterrupted.com/tr/mustafa-kemal-gungor/>; also see, MLSA, Cumhuriyet Davası: Kadri Gürsel'e beraat, diğer sanıklar için Yargıtay kararına direnme (November 21, 2019). Available at: <https://www.mlsaturkey.com/tr/cumhuriyet-davasi-kadri-gursele-beraat-diger-saniklar-icin-yargitay-kararina-direnme/>; also see, IHD, Cumhuriyet Gazetesi'ne, Yazarlarına ve Çalışanlarına Yönelik Baskıları Protesto Ediyoruz! (October 31, 2016). Available at: <https://www.ihd.org.tr/cumhuriyet-gazetesine-yazarlarina-ve-calisanlarina-yonelik-baskilari-protesto-ediyoruz/>.

86 It should be noted, however, that some participants were later judicially harassed. See, Bianet, Lawsuit Against Lawyer for Supporting Arrested Lawyers 'Under the Name of Justice Watch' (January 31, 2020). Available at: <https://bianet.org/english/law/219411-lawsuit-against-lawyer-for-supporting-arrested-lawyers-under-the-name-of-justice-watch>.

87 FIDH Online Interview no. 8 in May 2020 with a civil society representative. For more details, please see, Cumhuriyet, Çağlayan'da kayyım protestosuna müdahale (August 20, 2019). Available at: https://www.cumhuriyet.com.tr/video/video/1541602/Caglayan_da_kayyim_protestosuna_mudahale.html.



Demonstrators are hit by water cannon during a protest against the replacement of Kurdish mayors with State officials in three cities, in Diyarbakir, in eastern Turkey on August 20, 2019. The Government removed three mayors from office on August 19, 2019, over alleged links to Kurdish militants as Ankara deepened its crackdown on the opposition. The mayors of Diyarbakir, Mardin and Van provinces in eastern Turkey – all members of the Peoples' Democratic Party (HDP) elected in March – were suspended over alleged ties to the outlawed Kurdistan Workers' Party (PKK). © Ilyas AKENGİN / AFP

"Operation Olive Branch"⁸⁸ in January 2018 and "Operation Peace Spring"⁸⁹ in October 2019, HRDs demanding an end to pro-war policies or simply demanding peace, faced bans, police violence, judicial harassment, detention, and even prison sentences.⁹⁰ A civil society actor who was judicially harassed during this time stated that they had to be more careful about the language they used in press statements after that.⁹¹ A lawyer described the situation of peace activism in the following words:⁹²

You don't even need to go out and read out a press statement. You are considered lucky if you are allowed to do that. Many people who just used the word "peace" in their social media posts were arrested and even detained.

88 For more information, see, Reuters, Airstrikes pound Syria's Afrin as Turkey launches 'Operation Olive Branch' (January 20, 2018). Available at: <https://uk.reuters.com/article/uk-mideast-crisis-syria-turkey/airstrikes-pound-syrias-afrin-as-turkey-launches-operation-olive-branch-idUKKBN1F90RS>.

89 For more information, see, BBC, Turkey launches ground offensive in northern Syria (October 9, 2019). Available at: <https://www.bbc.com/news/world-middle-east-49983357>; also see, FIDH, Resolution on the on-going conflict in Syria and Turkey (November 18, 2019). Available at: <https://www.fidh.org/en/region/north-africa-middle-east/syria/resolution-on-the-on-going-conflict-in-syria-and-turkey>.

90 The Turkish Medical Association's Central Council issued a press statement entitled "War is a public health issue" following the launch of the "Operation Olive Branch." 11 members of the Council were judicially harassed and convicted for "inciting people to enmity and hatred." For more details about this case, please see, Front Line Defenders, Eleven Council members of the Turkish Medical Association sentenced to prison (May 10, 2014). Available at: <https://www.frontlinedefenders.org/en/case/eleven-council-members-turkish-medical-association-sentenced-prison>. For more information on the crackdown on dissent over "Operation Peace Spring," please see, Amnesty International, Turkey: "We can't complain": Turkey's continuing crackdown on dissent over its military operation "Peace Spring" in Northeast Syria (November 2019). Available at: <https://www.amnesty.org/en/documents/eur44/1335/2019/en/>.

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

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

Box #2 – IHD Istanbul's Press Statement on Military Offensives⁹³

On October 12, 2019, during the 759th gathering of the Saturday Mothers in Beyoğlu, Istanbul, the police attacked the weekly vigil in front of IHD's offices.⁹⁴ As usual, the protesters organised a silent sit-in displaying photos of their family members who were forcibly disappeared in the 90s. On that occasion, Ms. Gülseren Yoleri, co-President of IHD's Istanbul Branch, read a press statement demanding justice for those who forcibly disappeared, denounced the ongoing Turkish military intervention in Syria, and advocated peace. The press statement was interrupted by the police because it made references to the military offensive, and the police dispersed the crowd using tear gas and truncheons. Gülseren Yoleri was later judicially harassed for reading the statement based on an accusation of disseminating "terrorist propaganda." On February 6, 2020, police officers arrested Gülseren Yoleri at her home in Istanbul and took her to the police directorate to take her statement, in the framework of an investigation that was launched against her in relation to the press statement she made denouncing the ongoing Turkish military offensive in Syria. She was released after giving her statement, but the investigation is still ongoing, and the prosecutor is yet to make a decision on whether to launch a criminal case.

Following the "Operation Peace Spring," blanket bans on assemblies and other events were issued by the governorates of Diyarbakır, Gaziantep, Şanlıurfa, Adana, Tunceli, Mardin, and İzmir.⁹⁵ Similarly, after Turkey started another military offensive in Syria, "Operation Spring Shield,"⁹⁶ in March 2020, the Istanbul Governorate banned "all assemblies, demonstrations, press statements, setting-up of stands, collecting signatures, distributing leaflets and pamphlets and other similar events that are aimed at criticising the military operations conducted by the Turkish Military Forces in Syria or to form public opinion to end the operations" from March 1 to March 10 on grounds such as "protecting public order," "preventing crime," and "protecting others' rights and freedoms."⁹⁷

In addition to the Kurdish question and peace activism, civil society members reported many other issues that are not "tolerated" by the authorities during certain periods, including direct criticism of the President, the dismissal of public sector employees from their offices by emergency decrees due to their alleged ties with "terrorist groups," hunger strikes organised by prisoners, human rights violations by security forces, as well as LGBTI+ rights issues. Any assembly or event related to those issues is either directly banned or violently dispersed by the police. According to our sources, this list of sensitive subjects may change over time, as happened with LGBTI+ and women's rights issues, and nobody is immune from the arbitrary practices of the authorities.⁹⁸

93 For more details, please see, The Observatory, Urgent Appeal on Turkey: Arbitrary arrest and judicial harassment of Ms. Gülseren Yoleri, Istanbul Branch President of the Human Rights Association, TUR 002 / 0220 / OBS 015 (February 13, 2020). Available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-arbitrary-arrest-and-judicial-harassment-of-ms-gulseren-yoleri>.

94 Bianet, Police Intervention Against Saturday Mothers/People (October 12, 2019). Available at: <http://bianet.org/english/human-rights/214372-police-intervention-against-saturday-mothers-people>.

95 Amnesty International, Turkey: "We can't complain": Turkey's continuing crackdown on dissent over its military operation "Peace Spring" in Northeast Syria, p. 10 (November 2019).

96 The New York Times, Turkey Declares Major Offensive Against Syrian Government (March 1, 2020). Available at: <https://www.nytimes.com/2020/03/01/world/middleeast/turkey-syria-assault.html>.

97 Bianet, 'No to War' Ban in Istanbul Till March 10 (March 3, 2020). Available at: <https://bianet.org/english/society/220881-no-to-war-ban-in-istanbul-till-march-10>.

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

E. Lack of Judicial Remedies to Effectively Challenge Restrictions

“Courts cannot defend the freedom of assembly even if they wanted to; they don’t have the necessary protections to do so.”⁹⁹

Civil society actors reported that in most cases, no effective legal remedies are available against the authorities’ decisions to ban assemblies.¹⁰⁰ To start with, in some cases, bans are neither officially published nor are concerned parties notified, preventing civil society actors from examining the grounds for the ban and, most importantly, challenging those measures before the courts. This is particularly the case for city-wide general bans. For instance, it was reported that there have been instances where the Governorates of Izmir and Diyarbakır did not publish their decisions to ban assemblies for a certain period, and members of civil society was only informed about a general ban when a specific assembly was banned on the basis of this previous general ban.¹⁰¹ It was also reported that even official enquiries submitted to the authorities are sometimes left without a response.¹⁰²

Even if an official ban is published and/or notification is sent to the relevant parties, the judiciary’s immediate intervention would be needed in order that the banned public gathering might still be held on the date and in the location it was due to take place. However, it is reported that the administrative courts usually refrain from issuing interim measures temporarily suspending the execution of an administrative measure until a final judgement is given on the issue, although such interim measures are an option available to the judiciary if there is a risk of irreparable harm.¹⁰³ In the absence of immediate judicial intervention, it is almost impossible for civil society actors to obtain an expeditious and effective remedy. Even if the authorities’ restrictive measures are later found to be unlawful, an unlawful measure has most likely already produced its negative effects, as the date of the assembly is long past once the final judgment is issued. That being said, civil society actors also reported that the administrative courts only rarely strike down public authorities’ decisions, even after due consideration.¹⁰⁴ But even in those rare cases, the authorities achieve their goal of restricting a specific assembly by implementing an unlawful ban until it is struck down by the courts.

Box #3 – Blanket Bans on LGBTI+ Assemblies in Ankara

LGBTI+ rights defenders in Ankara have particularly suffered from the restrictions on LGBTI+-related assemblies and events. On November 18, 2017, during the state of emergency, the Governorate of Ankara introduced a blanket ban on all LGBTI+ assemblies and events. LGBTI+ organisations were later informed of another blanket ban introduced on October 3, 2018 by the Governorate of Ankara after the end of the state of emergency. Yet the existence of this second blanket ban was denied several times by the Governorate of Ankara.¹⁰⁵ In the meantime, LGBTI+ assemblies and events were being banned, with reference made to a blanket ban introduced by the Governorate of Ankara. The existence of this second ban was finally confirmed by the Governorate after LGBTI+ rights organisations submitted several official enquiries for information.¹⁰⁶

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

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

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

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

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

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

105 KAOS GL, Kaos GL’den Ankara’daki LGBTİ+ yasaklarına dair bilgi notu (May 29, 2019). Available at: <https://www.kaosgl.org/haber/kaos-gl-den-ankaradaki-lgbti-yasaklarina-dair-bilgi-notu>.

106 KAOS GL, Kaos GL’den Ankara’daki LGBTİ+ yasaklarına dair bilgi notu (May 29, 2019).

After several LGBTI+ organisations contested the bans before the courts on various occasions, on April 19, 2019 the first ban issued during the state of emergency was finally declared unlawful by the Ankara Regional Administrative Court, on the basis that an open-ended and indefinite blanket ban was unlawful even under the extraordinary circumstances of the emergency rule.¹⁰⁷ The lengthy legal battle against the second ban also succeeded eventually, and the ban was declared unlawful in March 2020 by Ankara's 2nd Administrative Court, confirming that an open-ended and indefinite blanket ban was not permissible considering that it was deemed illegal even under the emergency rule.¹⁰⁸ Although the legal battle against the two bans was "successful" in the end, for almost three years all LGBTI+-related activities and public gatherings were banned in the capital of Turkey. These two unlawful bans were effectively used as a method of harassment, which excluded LGBTI+ groups from the public sphere for a long period, and drained their energy and resources. The events cancelled on the basis of those two blanket bans included the Pride Parade in the Middle East Technical University ("METU") in both 2018 and 2019, a film screening by the Human Rights Centre of the Ankara Bar Association, a press statement on International Day against Homophobia, Transphobia and Biphobia organised by the Ankara Bar Association, and anti-discrimination symposia on December 10, International Human Rights Day.¹⁰⁹

Today, and despite the aforementioned decisions by the competent courts striking down the bans as unlawful, LGBTI+ events are still being banned all around Turkey by the authorities within the context of the Government's rising anti-LGBTI+ policies. Although there is no blanket ban in force in Ankara, civil society actors reported that, in practice, all LGBTI+ events and assemblies are banned on a "case by case basis."¹¹⁰

A lack of timely and effective judicial remedies also encourages authorities to continue adopting arbitrary measures and bans, abusing the powers granted by the law. Knowing that an unlawful ban is capable of creating facts on the ground until the courts intervene – if indeed they ever do so – the authorities arbitrarily restrict the right to freedom of assembly on a regular basis. A civil society actor highlighted that the courts bear responsibility for maintaining the bans and restrictions imposed by the authorities even when unlawful, by not timely intervening, by refraining from issuing interim measures, and by only issuing a decision when an issue has become less relevant to public discussion.¹¹¹ Higher courts occasionally recognise the violation of the right to freedom of assembly in particular cases or lift restrictive measures, but this does not matter a great deal in practice, beyond a mere recognition of the right, and compensation in some cases.

F. Arbitrary Practices, Police Violence, and Impunity

Widespread bans and restrictions on assemblies prevent citizens and civil society actors from raising their voices through public assemblies. Due to bans and restrictions, many people are prevented from exercising their right to freedom of assembly from the very beginning. On the other hand, widespread bans and restrictions also enable the police to use force against those who claim public spaces for the legitimate exercise of their right, despite unlawful restrictions. The mere fact that an assembly is "unauthorised" provides the police with the legal basis to disperse protesters and to use force.

¹⁰⁷ Susma 24, Ankara'da süresiz LGBTİ+ etkinlik yasağı kaldırıldı (April 19, 2019). Available at: <http://susma24.com/ankarada-suresiz-lgbti-etkinlik-yasagi-kaldirildi/>.

¹⁰⁸ KAOS GL, Ankara'daki İkinci LGBTİ Etkinlik Yasağı da Kaldırıldı (March 23, 2020). Available at: <https://www.kaosgl.org/haber/ankara-daki-ikinci-lgbti-etkinlik-yasagi-da-kaldirildi>.

¹⁰⁹ FIDH Online Interview no. 5 on May 2020 with a civil society representative.

¹¹⁰ FIDH Online Interview no. 5 on May 2020 with a civil society representative.

¹¹¹ FIDH Online Interview no. 13 on May 2020 with a civil society representative.

Disproportionate use of force by the Turkish police has been at epidemic levels for a long time now, and Turkey has been repeatedly criticised by international actors for not taking into account the peaceful nature of the assemblies when policing demonstrations. The European Commission has, for instance, condemned this practice, as well as the broader democratic backsliding in Turkey, firmly and consistently over the past few years, since the Gezi Park demonstrations made the issue widely visible to the international community and the general public.¹¹²

Article 23 of Law no. 2911 states that assemblies are unlawful unless they fulfil various procedural requirements, including the obligation to notify the authorities and to respect the restrictions on their location. Furthermore, under Article 24, police are entitled to disperse "unlawful" assemblies, including assemblies which start lawfully but turn unlawful during the course of the assembly, by first giving a notice to disperse and then by using force. As a result, police may crack down on assemblies that they characterise as "unlawful" or "unauthorised" on the basis of these statutes, regardless of whether the assembly is peaceful and whether their actions meet the test of necessity and proportionality. In addition, the police are equipped with broad discretionary powers and, in practice, whether an assembly can take place without any restrictions largely depends on the decisions taken by police officers and commissioners on the ground. Many civil society actors agree that the police exercise extremely broad powers and use them in an arbitrary manner. A civil society actor reported that whether a group of protesters will be dispersed depends solely on the order of a police commissioner, and even an "authorised" demonstration may be prevented by the police.¹¹³

Furthermore, under Article 16 of Law no. 2559 on the Duties and Authorities of Police,¹¹⁴ the police are entitled to use proportionate force, including physical force, truncheons, tear gas, pressurised water, and handcuffs to break resistance while executing its duties. This provision, coupled with the above-mentioned provisions of Law no. 2911, enables the police to use force against peaceful protestors who participate in an "unlawful" assembly and who refuse to disperse despite a warning.

In addition to those powers granted to the police, Law no. 7245 on Neighbourhood Guards¹¹⁵ provides wide powers to the guards, an armed security force recently established to assist other security forces. Article 6/ç allows guards to intervene in any gathering and demonstration which may disturb public order, as a preventive measure until regular police forces arrive on the scene. Furthermore, Article 9 gives the guards the right to use force, as broadly defined in the above-mentioned Article 16 of Law no. 2559. The new system of guards has been highly criticised by civil society actors for enhancing the security-centred policies of the Government, and for the inadequate scrutiny given to its members during the recruitment process.¹¹⁶

According to data shared by TIHV, in 2019 the police intervened in at least 1,215 assemblies by using force; during those, at least 95 people were injured, 3,980 were taken into police custody, 37 were detained, and 143 were subjected to other forms of judicial control, including travel bans, house arrest, and the obligation to report weekly to the police station. In addition,

112 "The peacefulness of a rally is not used as the basic criterion for the use of force to disperse participants; this is not in line with ECtHR case-law. Recurrent and structural problems in policing demonstrations are widely documented in the more than 40 ECtHR judgments against Turkey and the more than 100 pending applications." See, European Commission, Turkey 2014 Progress Report, p. 54 (October 8, 2014). Available at: <https://www.avrupa.info.tr/sites/default/files/2016-11/turkey-progress-report%202014.pdf>.

113 FIDH Online Interview no. 3 on May 2020 with a civil society representative.

114 Law no. 2559 on the Duties and Authorities of Police (*Polis Vazife ve Salahiyetleri Kanunu*) published in the Official Gazette no. 2751, dated July 7, 1934, and entered into force on the day of publication. Article 16 was amended on June 2, 2007.

115 Law no. 7245 on Market and Neighborhood Guards (*Çarşı ve Mahalle Bakçileri Kanunu*) published on the Official Gazette no. 31159, dated June 18, 2020, and entered into force on the day of its publication.

116 Evrensel, İHD Başkanı Türkdoğan: Polis devleti uygulaması bekçilikle pekiştiriliyor (January 24, 2020). Available at: <https://www.evrensel.net/haber/395945/ihd-baskani-turkdogan-polis-devleti-uygulamasi-bekcilikle-pekistiriliyor>.

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143 assemblies were prevented by the police, and their participants dispersed upon notice by the police, without the use of force by the latter. The assemblies confronted by the police might include anything from a gathering or press statement by medical professionals to protest violence against doctors on duty, to a sit-in by public sector employees dismissed by emergency decrees. Police violence not only deters right-holders from further participation in peaceful assemblies. The excessive use of force to repress demonstrations is also a way to portray protesters as "criminals" and "extremists." The images of protesters and civil society actors being severely beaten, man-handled, handcuffed, and taken into custody by police officers contributes to stigmatising and discrediting them in the eyes of the general public.

Civil society members reported various other arbitrary practices by the police that severely restrict the effective exercise of the right to freedom of assembly. The restrictions reach incomprehensible levels in certain cases. A women's rights defender reported that the police occasionally allow them to gather in a certain area provided that they do not march, while the police sometimes allow the protesters to march, provided however that they do not hold any banners or chant anti-Government slogans.¹¹⁷ On another occasion, they were asked why they wanted to read a press statement on the dismissal of HDP mayors, with the police noting that two other organisations had already read a press statement on this issue on the same day.¹¹⁸ Another civil society actor emphasised that the police often try to prevent them on the spot from using certain words or expressions in their press statements that may have some connection to the above-mentioned sensitive issues, but often the extent of those restrictions and the uncertainty that reigns around their scope are so broad that it is not even possible to make a meaningful press statement on rights-violations without using those words.¹¹⁹ Another women's rights defender reported that during International Women's Day demonstrations in Diyarbakır, demonstrators are only usually allowed to enter the area through police checkpoints, and are banned from bringing certain items inside.¹²⁰ For instance, it was not allowed to bring papers or pens inside the area. They were also prevented from taking their lipstick with them because they could allegedly write banners with lipstick.

These arbitrary practices by the security forces are by their nature unpredictable, and rather than supporting any legitimate purpose, seem designed to impose unreasonable burdens on protesters and to attempt to control the issues that may be publicly contested. This in turn has a chilling effect on protesters and civil society actors. They cannot safely plan their activities without knowing what kind of restrictions or sanctions they could face for their actions.

*"The reason why the law enforcement is so brutal when intervening in peaceful demonstrations is impunity. (...) The law enforcement is protected by the shield of impunity."*¹²¹

The general climate of impunity of the perpetrators is an aggravating factor for police violence, and an additional hurdle for protesters in exercising their right to freedom of assembly and obtaining justice in case of violations. Any investigation of a police officer is subject to the permission of the relevant governor, in accordance with Law no. 4483 on the Prosecution of Public Officials,¹²² and in an overwhelming majority of the cases of police brutality this permission is not even granted.¹²³ In the few instances of prosecution of police officers for using excessive force, court rulings were not deemed satisfactory, and even contributed to the perception of impunity.¹²⁴ Following the criticism directed at Turkey during the UN

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117 FIDH Online Interview no. 4 on May 13, 2020 with a civil society representative.

118 FIDH Online Interview no. 4 on May 13, 2020 with a civil society representative.

119 FIDH Online Interview no. 1 on May 13, 2020 with a civil society representative.

120 FIDH Online Interview no. 6 on May 13, 2020 with a civil society representative.

121 FIDH Online Interview no. 7 on May 13, 2020 with a civil society representative.

122 Law no. 4483 on the Prosecution of Public Officials published in the Official Gazette no. 23896, dated December 4, 1999, and entered into force on the day of publication.

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

124 On May 1, 2018, in a demonstration organised in Yüksel Street of Ankara to demand justice for those who were dismissed from the public offices with emergency decrees, a 75 year-old citizen was pushed to the ground

UPR in 2015 on the impunity of security forces, the Police Supervisory Commission was established in 2016.¹²⁵ It was announced that the commission was due to start its activities in 2019. Since then, a website¹²⁶ has been developed and they have had several meetings, but no major steps appear to have been taken on the issue of impunity. It was reported that whether the commission's decisions will be publicly available is not even known to civil society.¹²⁷

G. Judicial Harassment of Protesters

Judicial harassment of protesters is yet another tool used to crack down on peaceful assemblies. Many civil society actors and participants in peaceful assemblies face administrative fines, criminal investigations, prosecutions, and prison sentences, as a consequence of the exercise of their right to protest. Law no. 2911 sets forth a generous number of criminal provisions, including "participating in unlawful assemblies" and "resisting to disperse despite police announcement and use of force." Those who commit the said crimes may receive a prison sentence of up to three years. Given that almost all assemblies organised by civil society are "unauthorised" and deemed "illegal," participants in those assemblies constantly face the risk of indictment and subsequent judicial harassment. Additionally, there are other criminal provisions used to crack down on protesters. A peaceful protester can face up to a three-year prison sentence for "obstructing a police officer," as provided for under Article 265 of the Turkish Criminal Code.¹²⁸

Civil society actors reported that while convictions for violating Law no. 2911 are relatively low, they do occur. As per the official statistics released by the Ministry of Justice for 2018,¹²⁹ a total of 8,728 investigations were launched in 2018 for violating Law no. 2911, 4,837 of which led to a criminal prosecution. According to our sources, the majority of those who were prosecuted were later acquitted by the courts, which is a clear illustration of the abuse of those provisions in the first place.¹³⁰ Indeed, as per the official statistics, in 2018 courts released decisions in 11,967 cases (including cases launched before 2018) on charges of violating Law no. 2911, and 44.5% of those cases resulted in the acquittal of the defendant(s), while 19.6% resulted in convictions.¹³¹ Criminal investigations and prosecutions nevertheless have a chilling effect on protesters even if they do not result in convictions. The Ministry of Justice no longer publishes the official statistics relating to violations of Law no. 2911, and a civil society actor suggested that this is could be an attempt to hide from the public the high numbers of criminal investigations and relatively low number of convictions.¹³²

Investigations and prosecutions on the grounds of "terrorist propaganda" or "assistance to

by a police officer, causing serious injury in her face. A criminal case was launched against the police officer concerned, and in February 2019 the police officer was only given a fine of 3,000 TRY (amounting to approximately 500 EUR in February 2019). In addition, the court deferred the announcement of the verdict, thus suspending the enforcement of the punitive fine. See, T24, 75 yaşındaki Perihan Pulat'ı darp eden polise 3 bin lira para cezası (February 8, 2019). Available at: <https://t24.com.tr/haber/75-yasindaki-perihan-pulat-i-darbeden-polise-3-bin-lira-para-cezası,807425>; also see, Evrensel, 75 yaşındaki Perihan Pulat'ı darbeden polise 3 bin lira para cezası (February 8, 2019). Available at: <https://www.evrensel.net/haber/373101/75-yasindaki-perihan-pulati-darbeden-polise-3-bin-lira-para-cezası>.

125 The commission was established through the Law no. 6713 on the Establishment of Police Supervisory Commission published in the Official Gazette no. 29717 and dated April 5, 2016.

126 Available at: <http://kollukgozetim.gov.tr/>.

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

128 Turkish Criminal Code no. 5237 published in the Official Gazette no. 25611 and dated October 12, 2004.

129 The latest data on the investigations and criminal cases opened into the violations of Law no. 2911 was released in 2018. See, Ministry of Justice Directorate of Judicial Records and Statistics, Adli İstatistikler 2018, p. 24. Available at: <http://www.adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/2182019155518istatistik2018.pdf>.

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

131 1.1% of those cases resulted in the deferral of a pronouncement of the verdict (*hükümün açıklanmasının geri bırakılması* – an institution similar to suspension of prison sentences); in 11.4% the courts ruled that they had no jurisdiction over the case; and finally, 13.4% resulted in other decisions. See, Ministry of Justice Directorate of Judicial Records and Statistics, Adli İstatistikler 2018, p. 48.

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

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a terrorist organisation" are also common, particularly in relation to press statements read out during assemblies, and to the banners displayed. A civil society actor underlined that a criminal case launched on the grounds of "violating Law no. 2911" may later turn into a case based on terrorism charges.¹³³ This interchangeability between different crimes points to the lack of clarity in the law, and especially in its interpretation, as to what constitutes a specific crime, which is contrary to the principle of legal certainty. As a result, protesters can easily face heavy prison sentences based on terror charges simply for reading out press statements or participating in any sort of assembly. It also contributes to the conflation of protests with terrorism, thus further discrediting and demonising in the public eye those who exercise this right, and diminishing their place in society.

Judicial harassment of protesters may directly follow a planned assembly that was deemed unlawful and was prevented by the police. In particular, police detentions have a high chance of being followed by a criminal investigation. What is more striking is that a criminal investigation may also be launched years after an assembly took place, and even in cases where an assembly initially took place without any restrictions or police intervention.¹³⁴ This phenomenon is related to the general hostile environment against civil society and HRDs. When an HRD is specifically targeted by the authorities, a criminal case comprising a litany of previous human rights activities and participation in assemblies can be easily prepared for the sole purpose of harassment or retaliation, even years after the allegedly committed crime or crimes.

Box #4 – Judicial Harassment of Rosa Women's Association¹³⁵

Rosa Women's Association is an organisation recently established in Diyarbakır after all women's rights organisations in the region were shut down one by one by emergency decrees, based on their alleged ties to terrorist organisations. In the early morning of May 22, 2020, Turkish special operation forces raided the office of Rosa Women's Association

and the houses of 19 people in Diyarbakır, including 13 women's rights defenders, within the scope of a criminal investigation launched into Rosa Women's Association. All 19 were later taken into police custody and accused of "membership in a terrorist organisation" (under Article 314/2 of the Criminal Code). They were questioned about their activities, such as making press statements, organising demonstrations including the March 8 rally, holding banners asking the whereabouts of a woman missing for over 100 days, participating in the sit-ins of Peace Mothers on hunger strike, and participating in demonstrations against the dismissal of HDP mayors. It was reported that an anonymous witness alleged that the women's rights defenders were "aiming to reach out to more people by focusing on matters that concern women such as femicides and sexual harassment, and thus to recruit more people for a terrorist organisation giving an impression of conducting legal activities."

After their interrogation at the Anti-Terror Branch, four were released by the Prosecutor of Diyarbakır, but the other 15 were requested to be detained by the Prosecutor without being interrogated by the latter, and were referred to the Diyarbakır 1st Peace Judgeship. 13 were detained and one was put under house arrest by a judge's decision. This is a clear case of judicial harassment of Kurdish women's rights defenders for the legitimate and peaceful exercise of their right to freedom of assembly and association.

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

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

135 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>.

Another crucial aspect of the judicial harassment of peaceful protesters is that the cases are usually based on official police reports, which may not objectively reflect what has happened in an assembly. A civil society actor reported that, based on his own experience, the courts solely examine the police report, whereas the defendant's request to broaden the investigation and to submit new evidence is usually rejected.¹³⁶ The final judgment is motivated by the sole question of whether the protesters resisted despite the police's order for the group to disperse. The assembly's aim, whether it is in line with democratic standards, and the peaceful nature of the assembly, are rarely taken into consideration. The way in which these proceedings are conducted appears to violate basic standards for a fair trial, particularly the principle of equality of arms and the rights of the defence.

In some cases, convictions by lower courts are overturned by higher courts, or when other domestic remedies are exhausted, the Constitutional Court recognises the rights violations brought to its attention through the mechanism of individual applications. While those decisions are welcome in terms of doing justice and recognising human rights violations, in practice they produce very little positive impact. Similar to the ECtHR, the Constitutional Court may order compensation of the applicant whose fundamental rights, protected by the Constitution, are violated. In addition, an ongoing violation, such as prolonged arbitrary detention and judicial harassment, may be ended by those courts. However, as previously mentioned, those decisions usually come years after an assembly has taken place, when the deterrent effects of judicial harassment have already been produced, and when the issue in question is often no longer of public interest. Furthermore, given the bigger picture of the targeting of HRDs and other regime opponents in Turkey, even baseless criminal cases are capable of producing a chilling effect on the right-holders. Indeed, judicial harassment against peaceful protesters has been a deliberate strategy applied by the Government over the years to deter protesters and create this climate of fear within civil society.

Box #5 – Constitutional Court Ruling on a Peaceful Demonstration against Gold Mining

The Constitutional Court, in its decision on September 9, 2018, recognised the violation of the right to freedom of assembly of the applicants in a case regarding six protesters who had been prosecuted following a peaceful demonstration they organised in January 2015 against gold mining with cyanide.¹³⁷ The applicants had been sentenced to a suspended five-month prison sentence and a five-year probationary period¹³⁸ because the assembly went beyond the areas designated for assemblies, and the organisers did not timely submit the necessary documents. The Court emphasised that the violation of procedural requirements for the organisation of assemblies is not sufficient to justify the limitations on fundamental rights, and that the authorities need to be more tolerant vis-à-vis peaceful demonstrations that do not create "an unbearable burden" on public order. The Court also underlined that even a suspended five-month prison sentence with probation is capable of creating a chilling effect on protesters. While the Court's

¹³⁶ FIDH Online Interview no. 7 in May 2020 with a civil society representative.

¹³⁷ Constitutional Court judgment on October 9, 2018 concerning the application no. 2015/16311 by Ali Demirci and others. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/16311>.

¹³⁸ This institution is officially called "deferral of pronouncing of the verdict" (hükmün açıklanmasının geri bırakılması), which is an institution similar to suspension of prison sentences, and it was initially introduced for juvenile crimes. It enables the court to defer pronouncing the verdict. The criminal case is closed at the end of the probation period and not reflected in the criminal records of the defendant, provided that he or she does not commit any other crime in the next five years. In practice, this institution is also turned into a tool to harass HRDs, pushing them to accept the deferral instead of taking the risk of waiting for the verdict, which may result in an unjust conviction. For more information, see, Ankara Barosu Hukuk Gündemi, Hükmün Açıklanmasının Geri Bırakılması (February 2012). Available at: <http://www.ankarabarusu.org.tr/siteiler/ankarabarusu/hgdmakale/2012-2/27.pdf>.

decision is welcome and is in line with international standards, it should be noted that the applicants in question faced a risk of serving a prison sentence for almost four years during the probation period, while awaiting the Constitutional Court's decision. In addition, the case concerns an environmental demonstration, which is much less politically sensitive compared to many other similar cases.

According to our sources, and based on the judgments of the Court recognising clear violations of the freedom of assembly, it should not be concluded that the Court protects the right in question in all circumstances.¹³⁹ As of June 24, 2020, there have been 108 applications to the Court concerning the freedom of assembly; the Court issued 40 decisions recognising rights violations, found no violation in 19 applications, and deemed 30 manifestly ill-founded.¹⁴⁰ It was also reported that the Court's judgments are not always in line with international standards and lack solid legal reasoning, particularly in cases where no violation is found.¹⁴¹

H. The Chilling Effect of Restrictions and Harassment

*"Life is much more tiring than before. There is no single space we can express ourselves."*¹⁴²

The above-mentioned strategies for cracking down on peaceful assemblies have a clear chilling effect on the right-holders, and they are indeed used as a deliberate method to deter the free exercise of the right to protest. Faced over the years with systematic bans, stigmatisation, police violence, and judicial harassment of protestors, today many people, including civil society actors, abstain from exercising their right to freedom of assembly. In particular, legal uncertainty and arbitrariness in the implementation of legal provisions and administrative measures leave no room for the right-holders to assess the risks associated with exercising their fundamental rights to protest. In fact, there are many fewer public assemblies and events happening compared to previous years. A women's rights defender reported that, even as an activist group present on the ground, they do not organise as many public assemblies as before due to security concerns.¹⁴³ Others reported that the potential for violence prevents them from observing assemblies in person for their documentation activities.¹⁴⁴ And some others are constantly striving to find alternative methods to overcome restrictions, such as exploiting legal mechanisms to challenge bans and to continue organising public activities, but they refrain from confronting the police as they do not want to put their members at risk during assemblies.¹⁴⁵

This climate of fear also has an adverse impact on those who are not directly participating in the assemblies but are involved in other ways. It was reported that it is much more challenging to find a private venue for indoor assemblies of civil society actors. Owners of appropriate venues are afraid of providing a space for an assembly organised by civil society actors due to the security risks involved. Cases of harassment of those private parties by the authorities

139 For instance, in a case concerning police violence during International Labour Day demonstrations in 2014, the Court found no violation in the reasoning that the assembly as a whole was not peaceful, despite there being no specific allegations of violence committed by the applicant; that the authorities had deemed a different area suitable for the demonstrations; that the area in question was centrally located, such that the demonstrations could heavily disrupt daily life; and that the police warned the protestors several times to disperse. See, Constitutional Court judgment on February 12, 2020 concerning application no. 2016/14588 by Medine Eren. Available at: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/14588>.

140 The Constitutional Court's decisions are available at: <https://kararlarbilgibankasi.anayasa.gov.tr/>.

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

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

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

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

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

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were reported by certain civil society actors, for instance through strict implementation of fiscal and administrative requirements and the levying of fines.¹⁴⁶ Others reported that even the universities, which have often been subjected to governmental scrutiny over the years, refuse to provide spaces for the activities of civil society, and advise them not even to apply.¹⁴⁷

It is also important to highlight that many civil society actors reported that the official end of the state of emergency did not result in a more enabling environment for civil society and emphasised that a de facto state of emergency and a climate of fear persist due to legislative changes made during and after the emergency rule. Many mentioned that the overall situation has in fact worsened since then, and that they have never felt under so much pressure in regard to expressing themselves, exercising their rights, and accessing justice through the courts.

I. Examples of Affected HRD Groups

I.1. HRDs based in the South-East

*"We are facing risks that cannot be fully expressed by the existing words such as rights violation and risk."*¹⁴⁸

Kurdish human rights defenders have always been primary targets for harassment and demonization by the authorities. The collapse of the peace process between the Government and the PKK and the resumption of clashes between the two in 2015 had significant adverse impacts on civil society members active in the South-East of the country, along with others who defend the rights of Kurdish people across Turkey. Any discourse remotely related to the peaceful resolution of the conflict, a reconciliation with the country's dark past of abuses related to the fight against terrorism, or the severe human rights violations committed under cover of the curfews imposed on many cities in the South-East since 2015, has been heavily criminalised by the authorities ever since. Around-the-clock curfews in major towns in the South-East,¹⁴⁹ which began in 2015, continued throughout 2016, and have even endured to the present day in some areas where clashes continue.¹⁵⁰ They not only restricted the freedom of movement of local citizens, but also the ability of civil society actors to conduct any activities, including exercising their right to freedom of assembly. With the imposition of the state of emergency, the level of oppression hit a record high. Many civil society organisations in the South-East were shut down by emergency decrees, their assets were seized, and their members were criminalised and detained.¹⁵¹ Therefore, the violations of the right to freedom of assembly since 2015 must be read in the context of the Kurdish civil society's struggle to survive, as the developments over the past five years have only exacerbated severe pre-existing difficulties in the exercise of this right.

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¹⁴⁶ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

¹⁴⁷ FIDH Online Interview no. 3 in May 2020 with a civil society representative.

¹⁴⁸ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

¹⁴⁹ For more information on the curfews and the human rights situation under the curfews, see, FIDH & Euromed Rights, Human Rights Under Curfew (February 24, 2016). Available at: <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-human-rights-under-threat>; see TIHV, 79-Day Curfew – Cizre Field Report (March 31, 2016). Available at: <https://en.tihv.org.tr/79-day-curfew-cizre-field-report/>; also see, UN Office of the United Nations High Commissioner for Human Rights ("OHCHR"), Report on the human rights situation in the South-East July 15-December 2016 (February 2017). Available at: https://www.ohchr.org/documents/countries/tr/ohchr_south-east_turkeyreport_10march2017.pdf.

¹⁵⁰ According to the information gathered by the TIHV Documentation Centre, between August 16, 2015 and January 1, 2020, the authorities have declared at least 351 round-the-clock and/or open-ended curfews in 11 cities and at least 51 districts of Turkey. See, TIHV, Curfews in Turkey Between the Dates August 16, 2015 – January 1, 2020 (January 19, 2020). Available at: <https://en.tihv.org.tr/curfews-in-turkey-between-the-dates-16-august-2015-1-january-2020/>.

¹⁵¹ UN OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, p. 3, para. 13 (March 2018). Available at: https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf.

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Civil society actors based in the South-East of the country reported that they are under immense pressure, that their activities are surveilled by the police wherever they go, and that virtually none of their outdoor assemblies are allowed to take place. Furthermore, nearly all of their activities that take place in public spaces are subject to criminal investigation and prosecution.¹⁵² Similar to the general trend mentioned above, access to landmark public spaces where assemblies can be visible to the general public is blocked, and police forces are heavily present in those areas.¹⁵³

Oppression by the authorities severely affects the civil society organisations based in the South-East of the country, and which are working on a variety of issues including women's rights and environmental rights. Although some of them do not necessarily work on the Kurdish question, as civil society organisations based in the area their work is inevitably affected by those issues and has connections to the widespread human rights violations in the area, the ongoing internal armed violence, and the targeting of the HDP. As a result, many civil society actors face criminalization over their connections with Kurdish politics, find themselves labelled as "terrorists," and are often prosecuted on terrorism charges. A civil society actor described the situation as follows:¹⁵⁴

Any activity to exercise the right to freedom of peaceful assembly and association later returns to you as prosecution over "membership in a terrorist organisation," and there is no precise definition of terrorism.

The pressure in the region is so immense that HRDs, civil society actors, and others can be subjected to judicial and other forms of harassment even based on the potential of organising an assembly. It was reported that, prior to the dismissal of HDP mayors from office and the appointment of central Government representatives in their place on August 19, 2019, hundreds of people were detained on the previous night, some on the allegations that they were planning a protest against the dismissals, although nobody had yet known about the dismissals.¹⁵⁵ Those who were taken into police custody were later questioned about who had "instructed" them to organise protests against the dismissals. Aside from the absurdity of being accused of protesting an incident, the existence of which was then unknown, attempts to obstruct and criminalise peaceful protests aimed at raising legitimate and democratic concerns are impermissible under the Constitution of Turkey and international law.

Box #6 – Judicial Harassment of IHD Members and Executives

According to a report released by IHD in May 2019, at least 40 criminal investigations or criminal cases were pending against members, board members, and executives of IHD in the south-eastern cities of Adıyaman, Ağrı, Bingöl, Bitlis, Diyarbakır, Gaziantep, Hakkari, Mardin, Siirt, Şanlıurfa, Şırnak, Tunceli, and Van. These investigations stemmed from these individuals' activism concerning human rights violations, peace advocacy, ISIS attacks, and political issues related to the Kurdish question, which took the form of public statements and participation in demonstrations, protests, and sit-ins. The authorities' pursuit of criminal charges, meanwhile, was predicated on these individuals having violated Law no. 2911, disseminated terrorist propaganda, and incited people to hatred, as well as their supposed membership in a terrorist organisation.¹⁵⁶ An overwhelming majority of those investigations resulted in official

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152 FIDH Online Interview no. 2 in May 2020 with a civil society representative.

153 FIDH Online Interview no. 2 in May 2020 with a civil society representative.

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

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

156 For a list of cases of judicial harassment against IHD members and executives, 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; for more information on the recent cases of harassment against IHD and HRDs in Turkey, also see, IHD, İnsan

charges being brought, and many even resulted in convictions. Most recently, Mehmet Raci Bilici, former chair of the Diyarbakır Branch of IHD, was given a prison sentence of six years and three months on the charge of "membership in a terrorist organisation." The conviction was based on 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, and the indictment included accusations based on wiretaps and audio surveillance of civil society activities that he had engaged in, such as monitoring of the rights violations at assemblies in Diyarbakır.¹⁵⁷

1.2. LGBTI+ Rights Defenders

LGBTI+ rights defenders are among the civil society groups most affected by the crackdown and the emergency rule. According to LGBTI+ rights defenders, the crackdown on the latter started much earlier, around 2014, when the visibility of the LGBTI+ movement increased across Turkey during and after the Gezi Park protests.¹⁵⁸ The Pride Parade has been banned in Istanbul since 2014, and it was later banned in other major cities too as the LGBTI+ movement spread across Turkey.¹⁵⁹ The emergency rule was a turning point for the restrictions on the LGBTI+ community, as it was for many other groups. It was not only outdoor public assemblies by LGBTI+ groups that were being banned by the authorities, but also many indoor LGBTI+ events, including film screenings and talks. Today, all outdoor assemblies by LGBTI+ groups are prevented from taking place, and indoor events face rising levels of restrictions in the main cities such as Ankara, Izmir, and Antalya.¹⁶⁰ The ban on LGBTI+ assemblies and events has also gone hand in hand with the marginalisation and stigmatisation of the LGBTI+ community. As a result, the LGBTI+ movement has found itself largely excluded from the public sphere, vilified by the authorities and the public, and prevented from conducting any of those activities that they had long been conducting without any obstruction.

LGBTI+-related assemblies and events are regularly banned on abstract grounds such as "public safety," "the risk of inciting people to hatred and enmity," "public order," "prevention of crime," and "protection of the rights and freedoms of others."¹⁶¹ Although it is hard to second-guess the underlying motivation of the authorities due to the vague reasoning given in their decisions, it is particularly notable that in many cases LGBTI+-related activities were considered to be "provocative against the values and sensitivities of certain groups,"¹⁶² which could allegedly trigger aggravation and violence. While the activities were usually not directly banned because they were "against public values" and/or the values of any specified groups, the authorities chose to ban those events due to the alleged risk of aggravation and violence by certain groups, rather than taking appropriate measures to protect LGBTI+ groups. What is more striking is that "inciting people to hatred and enmity" is provided as a reason for banning LGBTI+ events. It is quite hard to understand the authorities' unconventional approach to incitement, as it implies that the very existence of LGBTI+ events incites people to hatred

Hakları Savunuculuğu ve İHD'ye baskılar (April 13, 2020). Available at: <https://www.ihd.org.tr/insan-haklari-savunuculuğu-ve-ihdye-baskilar-ozel-raporu/>.

157 For more information, see, Amnesty International & Front Line Defenders & 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>.

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

159 For more detailed information, please see. Eşit Haklar için İzleme Derneği, Barışçıl Toplantı ve Gösteri Hakkı – 2016-2019 Türkiye'de Onur Yürüyüşü Özel Bülten. Available at: https://www.esithaklar.org/wp-content/uploads/2019/09/toplanti_ve_bariscil_gosteri_bulten_pride.docx.

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

161 See, Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 22 (February 27, 2019). Available at: <http://www.toplumsal hukuk.net/wp-content/uploads/2019/02/OHAL-RAPORU.pdf>.

162 See, Toplumsal Hukuk, Toplumsal Hukuk OHAL Döneminde Toplantı Özgürlüğü İhlalleri Raporu, p. 22 (February 27, 2019).

and enmity, rather than condemning the groups and individuals who actually express hatred against LGBTI+ individuals and groups.

LGBTI+ rights defenders in Ankara were particularly affected over the past years. It was reported that the crackdown dates to before the state of emergency,¹⁶³ and that the March against Homophobia and Transphobia was not allowed to take place since 2016 on the grounds that "some segments of society could show negative reactions to the participants of the assembly and it could result in provocative acts."¹⁶⁴ The rising tension between LGBTI+ groups and the authorities resulted in a total ban on assemblies following the state of emergency. As mentioned above (see Box #3 for more information), the Governorate of Ankara introduced two blanket bans on LGBTI+ events, the first one on November 18, 2017, during the state of emergency, and the second one on October 3, 2018, after the end of the state of emergency.

While the lengthy and burdensome legal battle against both of those blanket bans ended "successfully," for almost three years all LGBTI+ -related assemblies and events were banned in the capital of Turkey. Unlawful bans were effectively used as a method of harassment, which excluded LGBTI+ groups from the public sphere for a long period and drained their energy and resources. An LGBTI+ rights defender underlined that the crackdown on LGBTI+ assemblies and events still continues despite the lifting of those two blanket bans by the court, and that smear campaigns along with hateful discourse against the LGBTI+ community by the authorities and non-state actors remain serious concerns.¹⁶⁵ As long as democratic principles, including the principles of equality and non-discrimination, are not internalised by the public and the authorities, reported the same actor, LGBTI+ individuals do not have high hopes that isolated court decisions will provide relief.

Box #7 – Harassment of METU LGBTI+ Solidarity Members

The harassment and smear campaign experienced by the defenders from METU LGBTI+ Solidarity are worth further examination as they provide a clear illustration of the process by which LGBTI+ rights defenders are harassed. On May 6, 2019, shortly before the planned METU Pride March, the university rector sent an e-mail to all students of METU, informing them that the Rectorate would not allow the event by reason of the Governorate of Ankara's second blanket ban on LGBTI+ assemblies.¹⁶⁶ On the day of the event, the police, invited by the Rectorate, used pepper spray, plastic bullets, and tear gas to disperse students. Over 20 students and an academic were taken into police custody, and subsequently released late at night.¹⁶⁷

In the ensuing months, the members of METU LGBTI+ Solidarity faced other forms of harassment. On May 10, they were deprived of their governmental scholarships and loans without an official investigation, upon a letter sent by Ankara Security Directorate to the provider of student scholarships and loans.¹⁶⁸ Furthermore, early on the morning on June 30, the day of METU's graduation ceremony, homes of activists of METU LGBTI+ Solidarity were raided by the police, and their occupants were taken into

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

164 KAOS GL, Ankara Valiliği homofobi ve transfobi karşıtı yürüyüşün güvenliğini sağlamayı reddetti (May 20, 2016). Available at: <https://www.kaosgl.org/haber/ankara-valiligi-homofobi-ve-transfobi-karsiti-yuruyusrsquoun-guvenligini-saglamayi-reddetti>.

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

166 Susma24, ODTÜ'de Onur Yürüyüşü'ne yasak (May 6, 2019). Available at: <http://susma24.com/odtude-onur-yuruyusune-yasak/>.

167 Evrensel, ODTÜ'de Onur Yürüyüşüne polis saldırısı: 22 gözaltı, 1 yaralı (May 10, 2019). Available at: <https://www.evrensel.net/haber/379135/odtude-onur-yuruyusune-polis-saldirisi-22-gozalti-1-yarali>.

168 Bianet, Students stripped of scholarships for attending LGBTI+ parade (July 2, 2019). Available at: <https://bianet.org/5/146/210013-students-stripped-of-scholarships-for-attending-lgbti-parade>.

custody.¹⁶⁹ They were prevented from joining their own graduation ceremony based on the allegations that they were planning a demonstration during the ceremony. All those arrested were released later.¹⁷⁰

On August 5, 2019, 19 LGBTI+ rights defenders who were previously taken into custody were informed of a criminal case launched against them on charges of “participating in an unlawful assembly” and “resisting despite warning,” for their participation in the Pride Parade.¹⁷¹ The first hearing was held on 12 November 2019 in Ankara’s 39th Penal Court of First Instance, and the case remains pending.¹⁷² During this process, the accused members of METU LGBTI+ Solidarity were even prevented by the police from making a press statement in front of the court house, prior to their hearing.¹⁷³ This case is a clear demonstration of the Government’s increasing intolerance for LGBTI+ rights defenders, and its insistent attempts to prevent them from exercising their right to peaceful assembly in public spaces, and to harass them for their attempts to do so.

In Istanbul, the last time the Pride Parade was officially allowed was in 2014, and it has been banned since then. The authorities’ initial reasoning for the ban was based on the Parade’s coincidence with Ramadan, a month with a particular spiritual meaning to Muslims. Although the Pride Parade did not again coincide with Ramadan in 2017, it was still banned, this time for security concerns, signalling that Ramadan was only a pretext used by the authorities to crack down on the LGBTI+ community. The same year, the Pride Parade was openly threatened by the Istanbul president of *Alperen Ocakları*, a conservative nationalist group, when he stated on a TV programme that the LGBTI+ rights agenda was a “capitalist, communist and imperialist project” which “targets the family” and that “they would not let this happen even if the authorities allow.”¹⁷⁴ Amid such security threats, the authorities chose to ban the Pride Parade instead of fulfilling its positive obligations and taking the necessary measures to protect the free exercise of the right.

Both in 2018 and 2019, the Pride Parade was once again banned in Istanbul although it did not coincide with Ramadan and there were no concrete threats targeting the parade, illustrating that the authorities had only used those circumstances as a pretext to ban the Parade.¹⁷⁵ LGBTI+ rights defenders were only allowed to read a press statement in several

169 KAOS GL, ODTÜ’de Mezuniyet Töreni Öncesi Öğrencilere Gözaltı (June 30, 2019). Available at: <https://www.kaosgl.org/haber/odtu-de-mezuniyet-toreni-oncesi-ogrencilere-gozalti>.

170 Bianet, Students stripped of scholarships for attending LGBTI+ parade (July 2, 2019). Available at: <https://bianet.org/5/146/210013-students-stripped-of-scholarships-for-attending-lgbti-parade>.

171 Front Line Defenders, Nineteen LGBTI+ rights defenders charged with “participating in unlawful assembly” and “resisting despite warning” (August 7, 2019), Available at: <https://www.frontlinedefenders.org/en/case/metu-university-rectorate-must-stop-violating-right-peaceful-assembly-students-defending-lgbti>.

172 For more details about the recent developments, please see, Keep the Volume Up for Rights Defenders in Turkey, METU LGBTI+ Solidarity (updated on March 17, 2020). Available at: <https://www.sessizkalma.org/en/defender/metu-lgbti-solidarity/>.

173 KAOS GL, ODTÜ Onur Yürüyüşü davası basın açıklaması engellendi (November 12, 2019). Available at: <https://www.kaosgl.org/haber/polis-odtu-onur-yuruyusu-davasi-basin-aciklamasini-engelledi>.

174 KAOS GL, Yargılanan Alperen Ocakları Başkanı’ndan yine tehdit! (June 19, 2017). Available at: <https://www.kaosgl.org/haber/yargilanan-alperen-ocaklari-baskanirsquondan-yine-tehdit>. The same group had previously issued a statement threatening the Pride Parade in 2016, in addition to threats by other actors. The Istanbul president of *Alperen Ocakları* was prosecuted for his threat in 2016, and later received, in December 2017, a prison sentence that was converted to a punitive fine of 4,000 TRY (around 900 EUR back then). Despite isolated convictions such as in this case, the hateful discourse and threats against the LGBTI+ community continued in the following years, especially because the negative narrative was openly promoted, or, at least, condoned by governmental officials, and because the latter failed to firmly condemn such acts. See, Sputnik Türkiye, Alperen Ocakları’ndan Onur Yürüyüşü tehdidi: Olacakların sorumlusu değiliz (June 15, 2016). Available at: <https://tr.sputniknews.com/turkiye/201606151023364793-alperen-ocaklari-onur-yuruyusu-tehdit/>; Sputnik Türkiye, Alperen Ocakları Başkanı’nın LGBTİ’yi tehdit davasında karar çıktı (December 12, 2017). Available at: <https://tr.sputniknews.com/turkiye/201712141031406036-alperen-ocaklari-lgbti-tehdit-davasi/>.

175 Bianet, Valilik’ten Onur Yürüyüşüne Yasak Kararı; Yürüyüş Komitesi’nden Çağrı (June 29, 2018). Available at: <https://m.bianet.org/bianet/lgbti/198764-valilik-ten-onur-yuruyusune-yasak-karari-yuruyus-komitesi-nden>.



Members of the LGBTI+ community wave flags as they participate in a march during the Pride Parade in Istanbul, on June 30, 2019. The police on June 30 fired tear gas at rights groups and activists who defied authorities to march for the Istanbul Pride Parade. Thousands of people rallied in a small street close to the popular Istiklal Avenue and Taksim Square where organisers originally planned to hold the parade, an AFP correspondent said. © BULENT KILIC / AFP

locations near Istiklal Street, the home of the Pride Parade since its start. However, the groups who tried to come together in some other areas around Istiklal Street were dispersed by force, and some were taken into police custody. Six people who were taken into custody in 2018 were later judicially harassed on the grounds of "risking traffic security" and "obstructing police officers."¹⁷⁶

In Istanbul, even a sports event related to the LGBTI+ community was banned although such events do not require the "permission" of the authorities, according to Article 4 of Law no. 2911. On August 23, 2019, the day of the event, the District Governorate of Kadıköy banned a queer sports event, Queer Olympix, on the grounds of "preventing provocative acts against the participants," "protecting public order, morality and health," and "prevention of crime."¹⁷⁷ Water cannons and police buses were present at the event location, creating a deterrent effect and stigmatising the participants of the event in the eyes of the public. The ban was later found unlawful in May 2020 by the court on the basis that the authorities did not provide the court with any concrete information and documentation justifying the ban.¹⁷⁸

¹⁷⁶ [cagri](https://www.bbc.com/turkce/haberler-turkiye-44675781); BBC Türkçe, Yasağa rağmen LGBTİ+ bireyler Onur Yürüyüşü için İstanbul'da bir araya geldi: '5 gözaltı' (July 1, 2018). Available at: <https://www.bbc.com/turkce/haberler-turkiye-44675781>; Bianet, Police Attack with Shields, Pepper Gas After Pride Parade Statement Read (June 30, 2019). Available at: <http://bianet.org/english/lgbti/209921-police-attack-with-shields-pepper-gas-after-pride-parade-statement-read>.

¹⁷⁶ Bianet, Lawsuit Against 6 Participants of 2018 İstanbul LGBTI+ Pride Parade (February 26, 2019). Available at: <https://bianet.org/english/lgbti/205870-lawsuit-against-6-participants-of-2018-istanbul-lgbti-pride-parade>.

¹⁷⁷ Susma24, Kadıköy Kaymakamlığı'ndan Queer Olympix'e yasak (August 24, 2019). Available at: <http://susma24.com/kadikoy-kaymakamligindan-queer-olympixe-yasak/>.

¹⁷⁸ KAOS GL, Mahkeme: Queer Olympix'in yasaklanması hukuka aykırı (May 15, 2020). Available at: <https://www.kaosgl.org/haber/mahkeme-queer-olympix-in-yasaklanmasi-hukuka-aykiri>.

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It was reported that the authorities did not in fact submit any documents or information to the court, except for the ban itself.¹⁷⁹

A civil society actor reported that the restrictions on LGBTI+ assemblies and events have other significant impacts beyond its impairment of the right to freedom of assembly.¹⁸⁰ LGBTI+ parades and other similar assemblies give a chance to many LGBTI+ people to be surrounded by other LGBTI+ people, and this helps them to embrace their identity. LGBTI+ parades may be the first time that an LGBTI+ individual feels accepted and not labelled as "guilty," and the severe restrictions on these assemblies deprive them of such opportunities for solidarity as are provided by the LGBTI+ community. Even if an assembly is not officially banned, the hateful discourse and smear campaign against LGBTI+ assemblies, coupled with the threats of attacks by third-parties and repression by the authorities, generate fear within the LGBTI+ community and push some of its members into refraining from taking part in such assemblies. For those reasons, full and meaningful exercise of the freedom of assembly is of particular importance to LGBTI+ people, and any restriction on this right is bound to have a disproportionate impact on them.

1.3. Women's Rights Defenders

*"We lost our status as a non-attackable group."*¹⁸¹

The women's rights movement in Turkey had long enjoyed an air of legitimacy, and advancement of women's rights had been perceived by the authorities as a more "acceptable" human rights agenda. Civil society actors falsely believed that the Government would not go so far as to directly target women's rights defenders, but recent developments in Turkey have proven them wrong. A women's rights defender reported that – with the exception of Kurdish women's rights defenders – when the state of emergency was declared, the women's rights movement was not among the first to be targeted and severely affected.¹⁸² While its members were concerned and apprehensive due to the ongoing crackdown, they were still able to continue exercising their right to freedom of assembly to a certain extent.¹⁸³ However, the situation quickly escalated for them too, and as one of the last remaining groups publicly raising criticism towards the Government's authoritarian and patriarchal policies, they could not remain exempt from the general repressive environment and the crackdown on freedom of assembly.

Kurdish women's rights-defenders, on the other hand, have been facing immense pressure since the beginning of the state of emergency, similar to many other Kurdish human rights defenders. All critical women's rights organisations in the South-East were shut down by emergency decrees, and the intense crackdown on freedom of assembly and association fell heavily on civil society actors in the region, including women's rights defenders. A women's rights defender from the region reported that all public assemblies, press statements, and other activities on women's rights are being banned and criminalised, and women's associations labelled as "illegal" organisations.¹⁸⁴

The indoor activities of women's rights defenders in the South-East also face serious restrictions. Finding a venue for the activities of critical civil society organisations became extremely challenging after Government representatives were appointed to run the former HDP municipalities, with whose previous mayors civil society members had used to collaborate.¹⁸⁵ According to our sources, when an activity is organised on the premises of

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¹⁷⁹ KAOS GL, Mahkeme: Queer Olympix'in yasaklanması hukuka aykırı (May 15, 2020).

¹⁸⁰ FIDH Online Interview no. 5 in May 2020 with a civil society representative.

¹⁸¹ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁸² FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁸³ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁸⁴ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

¹⁸⁵ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

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a women's rights organisation, the area is usually surrounded by police vehicles and water cannons, and everyone entering the building is filmed, contributing to the impression that such activities and those who organise them are unlawful.¹⁸⁶ The same defender described the situation thus: "outdoor assemblies, indoor events and social media posts are all criminalised; I don't know how we are supposed to demand our rights silently."¹⁸⁷

Recently, women's rights defenders associated with the Rosa Women's Association and other women's initiatives in Diyarbakir were accused of "membership in a terrorist organisation" for their involvement in assemblies directly related to women's rights (see Box #4 for more details). Although International Women's Day assemblies were allowed to take place in Diyarbakir for the past few years, the women's rights defenders were questioned about their participation in those assemblies.¹⁸⁸

Women's rights defenders in other parts of the country also face challenges over their connection with the Kurdish women's rights defenders, and their protests are usually dispersed immediately by the police, using excessive force. It was reported that activities of women's rights defenders that seek to establish a connection between pro-war policies and gender-based violence have been restricted for this reason.¹⁸⁹ Similarly, a demonstration organised by women's rights defenders in Istanbul in August 2019 in response to the dismissal of HDP mayors, and its adverse impact on the pro-women policies implemented by those municipalities, was prevented by the police, and its participants taken into police custody.¹⁹⁰ The women's rights defenders in the West of the country were also prevented from organising visits to the South-Eastern towns under curfews to show solidarity with women's rights defenders there.¹⁹¹ This had an adverse impact on their activities.

In Istanbul, despite the long-lasting ban on Taksim Square as a site for public assemblies and events, the women's rights movement was for a long time mostly exempted, in practice, from this ban. Nevertheless, restrictions on landmark women's rights demonstrations in Taksim Square, including the ones organised for the International Day for the Elimination of Violence against Women on November 25 and International Women's Day on March 8, started in late 2017 and have progressively intensified since then. The ban on Taksim Square as a site for women's rights protests remains the main reason for conflict with the authorities.¹⁹² In the meantime, the authorities continued to stigmatise and criminalise women's rights groups on different occasions, not least in an effort to reduce their legitimacy in the eyes of the public and thus further increase the pressure on women's rights defenders, who were among the last remaining groups publicly expressing criticism towards Government policies.

A civil society actor reported that a major source of controversy between the authorities and women's rights defenders in Istanbul is the restrictions on the location and venue of assemblies; however, there is no consistency in practice relating to either "designated" or "non-permissible" locations, other than Taksim Square. As a result, the organisers can never

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¹⁸⁶ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

¹⁸⁷ FIDH Online Interview no. 6 in May 2020 with a civil society representative.

¹⁸⁸ The assemblies were for example allowed to take place in 2020, 2019, 2018, and 2017. In 2018, despite a prior ban, the assembly was later allowed to take place. During the assemblies, the participants were restricted from bringing allegedly "illegal" banners or other symbols into the assembly area, although there was no total ban. See, Evrensel, Diyarbakır'da kadınlar 8 Mart'ta alanda: Direnişi örgütüyor, özgürlüğe yürüyoruz (March 8, 2020). Available at: <https://www.evrensel.net/haber/398986/diyarbakirda-kadinlar-8-martta-alanda-direnisi-orgutluyor-ozgurlyuge-yuruyoruz>; Sputnik Türkiye, Diyarbakır'da 8 Mart mitingi: Leyla Güven ve Öykü Arın için çağrı (March 8, 2019). Available at: <https://tr.sputniknews.com/turkiye/201903081038101263-diyarbakir-kadinlar-gunu-leyla-guven-oyku-arin-miting/>; Evrensel, Diyarbakır'da 8 Mart yasağına itiraz kabul edildi (March 1, 2018). Available at: <https://www.evrensel.net/haber/346659/diyarbakirda-8-mart-yasagina-itiraz-kabul-edildi>; BBC Türkçe, Diyarbakır: 8 Mart OHAL'e rağmen rengarenk (March 8, 2017). Available at: <https://www.bbc.com/turkce/haberler-turkiye-39207668>.

¹⁸⁹ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁹⁰ Bianet, Kadınların Kayyum Protestosuna Müdahale 23 Gözaltı (August 24, 2019). Available at: <https://m.bianet.org/bianet/toplumsal-cinsiyet/212184-kadinlarin-kayyum-protestosuna-mudahale-23-gozalti>.

¹⁹¹ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁹² FIDH Online Interview no. 4 in May 2020 with a civil society representative.

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reasonably predict if an assembly will face restrictions or, once it has begun, be met with police violence. Several sources, on the other hand, emphasised that the women's rights movement is also stigmatised and criminalised over its connections with the LGBTI+ movement and Kurdish women's rights defenders, groups that are directly targeted by the authorities. The restrictions imposed upon assemblies staged by women's rights defenders confirm this phenomenon.

In 2017, the demonstrations in Istanbul on November 25, International Day for the Elimination of Violence against Women, faced significant restrictions for the first time. Around the same dates, Queer Fest, an LGBTI+ event, was banned by the Governorate of Beyoğlu, and it was reported that the women's demonstration on November 25 was somehow considered to be a continuation of the same LGBTI+ event, and notice of the ban on the women's rights demonstration was mistakenly delivered to the entity hosting the LGBTI+ event.¹⁹³ Despite the ban addressed to the wrong organisation, women gathered in Tünel Square, located at the end of İstiklal Street, but the police prevented them from walking down İstiklal Street. During the demonstration, some participants were warned several times by the police about the LGBTI+ -related banners they were holding and were told to remove the banners, or else the police would intervene.¹⁹⁴

A year later, on November 25, 2018, although no notification of the official ban was sent to the organisers, some other participating organisations were contacted and informed that the demonstration would not be allowed.¹⁹⁵ On the day of the demonstration, women were initially allowed to gather in Tünel Square under heavy police presence, but were prevented from marching down İstiklal Street by police barricades.¹⁹⁶ After the protesters insisted on marching, the police dispersed the crowd using tear gas. This was a major signal that women's rights defenders' access to public spaces could be further restricted by the authorities and that they were not safe from police violence. The women's march in the Kadıköy district of Istanbul was also banned that same year by the Governorate of Istanbul, and the crowd was only allowed to make a statement to the press.¹⁹⁷

A few months later, on March 8, 2019, some of the organisers of the Feminist Night March¹⁹⁸ received a call from the police directorate stating that the march would not be allowed, but women took to the streets anyway. This time all public access to İstiklal Street was blocked and shops were closed down around 4 pm. Women gathered in Taksim Square despite the ban, but after a while the police dispersed the crowd by force, including tear gas and plastic bullets, and pushed the crowd out of Taksim Square.¹⁹⁹ What is more striking is that in the following days, President Erdoğan started a smear campaign against women's rights defenders and accused them of "whistling and booing the call to prayer"²⁰⁰ based on video footage showing the crowd chanting and making noise during the demonstration while the call to prayer was also taking place. The hateful discourse continued in the following period, with Erdoğan accusing women's rights defenders of being the enemy of the nation and disrespecting Islam, while he campaigned before local elections.²⁰¹ This clear attempt to publicly stigmatise and

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¹⁹³ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁹⁴ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁹⁵ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

¹⁹⁶ Bianet, November 25 March in Taksim Could Not Be Held, Police Use Tear Gas (November 25, 2018). Available at: <http://bianet.org/english/women/202924-november-25-march-in-taksim-could-not-be-held-police-use-tear-gas>.

¹⁹⁷ Bianet, November 25 march in Kadikoy prevented by police (November 25, 2018). Available at: <http://bianet.org/english/women/202929-november-25-march-in-kadikoy-prevented-by-police>.

¹⁹⁸ Feminist night march has been organised by women in Istanbul's İstiklal Street every year on March 8, International Women's Day, since 2003, to raise their voices against patriarchy, sexism, discrimination, and gender-based violence.

¹⁹⁹ Bianet, Police attack feminist night march with pepper gas (March 8, 2019). Available at: <http://bianet.org/english/women/206264-police-attack-feminist-night-march-with-pepper-gas>.

²⁰⁰ Reuters, Erdogan accuses women's march of disrespecting Islam (March 10, 2019). Available at: <https://www.reuters.com/article/us-womens-day-turkey-erdogan/erdogan-accuses-womens-march-of-disrespecting-islam-idUSKBN1QR0JT>.

²⁰¹ Anadolu Agency, Cumhurbaşkanı Erdoğan: Ezan ve bayrak düşmanları ile sonuna kadar mücadele edeceğiz (March 3, 2019). Available at: <https://www.aa.com.tr/tr/politika/cumhurbaskani-erdogan-ezan-ve-bayrak>.

discredit women's rights defenders came as a shock for many civil society actors. However, a women's rights defender reported that the smear campaign did not resonate well with the general public thanks to the women's rights movement's solid and legitimate grounds, and some pro-Government media even apologised for accusing the women of wrongdoing.²⁰²

In the following period, restrictions on women's right to freedom of assembly continued. The demonstration on November 25 was officially banned by the Governorate of Istanbul in 2019, but following meetings between the organisers and the authorities, the demonstration was eventually allowed to take place under certain restrictions. Hundreds of women once again gathered in Istiklal Street in Istanbul, under heavy police presence. But following the issuance of a press statement, and as the crowd was preparing to leave the area, the police attacked, with tear gas and plastic bullets, a small group who did not want to leave the area. The Police Directorate stated in its press release that "there was a group of some 50 extremist and LGBTI+ people in the crowd, who refused to leave the area in defiance of police orders and who pushed the police barricade." The statement also added that "the group was dispersed by shooting tear gas towards the ground, which" – according to the authorities – "was a proportionate intervention," and that "no one was taken into custody." In addition to raising concerns regarding the authorities' disproportionate reaction against peaceful protesters, this statement clearly demonstrates how LGBTI+ groups are portrayed as "extremists" by the authorities, and their simple presence is presented as a valid ground for using force against peaceful protestors. According to our sources, the fact that some participants wanted to continue marching down Istiklal Street, a legitimate exercise of their right to freedom of assembly, was no justification for the police's use of force, and it was the arbitrary restrictions and police presence that triggered the conflict.²⁰³

Most recently, on March 8, 2020, the Feminist Night March in Istanbul was officially banned on the grounds that "Istiklal Street is not one of the designated areas for public demonstrations." All streets leading up to Istiklal Street were closed to women by police barricades, and public transport to the adjoining Taksim Square was shut down.²⁰⁴ It was reported that, on this occasion, the authorities did not leave any room for finding middle ground, and did not accept any proposals to use alternatives routes around the area.²⁰⁵ Despite the ban, the protesters gathered in Siraselviler, another main street leading to Taksim Square.²⁰⁶ Some protesters decided to march towards other areas, but others attempted to pass the police barricades. In response, the police pushed women back, again using tear gas. For the first time, the police took tens of protesters into custody, while also using excessive force against some of them. Dispersing the crowd was – as per the police's usual practice – considered a sufficient reason to take people into custody. Video footage released after the demonstrations on media websites and social media show a woman being led by a plain-clothes officer through a crowd of police officers trying to hit her.²⁰⁷ All 34 demonstrators in police custody were released on the following morning;²⁰⁸ however, women's rights defenders underlined that a criminal investigation may be launched against those who were taken into custody.²⁰⁹

[dusmanlari-ile-sonuna-kadar-mucadele-edecegiz/1413986](https://bianet.org/bianet/dusmanlari-ile-sonuna-kadar-mucadele-edecegiz/1413986).

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

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

204 Bianet, Taksim Meydanına 8 Mart "Önlemi" (March 8, 2020). Available at: <https://bianet.org/bianet/kadin/221093-taksim-meydanina-8-mart-onlemi>.

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

206 Bianet, Women Don't Leave Taksim Despite Police Intervention (March 8, 2020). Available at: <http://bianet.org/english/women/221104-women-don-t-leave-taksim-despite-police-intervention>.

207 For the video footage, see, T24, 8 Mart'ta gözüktüğüne alınan kadına polis koridorunda şiddet kamerada (March 9, 2020). Available at: <https://t24.com.tr/video/8-mart-ta-gozaltina-alinan-kadina-polis-koridorunda-siddet-kamerada,26680>.

208 Bianet, Women Detained in Feminist Night March in İstanbul Released (March 9, 2020). Available at: <https://bianet.org/english/women/221120-women-detained-in-feminist-night-march-in-istanbul-released>.

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

Public demonstrations around key dates for the international women's rights movement are not the only instances in which police violence and harassment have been employed against women's rights defenders in reaction to their legitimate exercise of the freedom of assembly. In December 2019, many women's rights defenders across Turkey gathered for a remake of the dance performance "A Rapist in Your Path," staged by the Chilean group Las Tesis to protest violence against women.²¹⁰ In the Kadıköy district of Istanbul, the police used force to disperse the crowd on the grounds that the demonstration was "illegal," and that the lyrics "*the rapist is you, the murderer is you, the police, the judges, the State, the president*" constituted a crime.²¹¹ Six women's rights defenders were taken into police custody and released the following day on probation. Two of them reported bruises as a consequence of an allegedly excessive use of force by the police while being taken into custody. All six have since faced accusations of "defamation of the Turkish Republic and its institutions," "insulting the President," and "violating the Law on Public Assemblies and Demonstrations." Similar demonstrations took place in Ankara, Izmir, and other parts of Istanbul, most of which resulted in either police violence and/or criminalisation of the protestors afterwards. According to some sources, the reason why the Las Tesis protests were criminalised was the lyrics directly accusing the President, which in the eyes of the authorities is a red line that cannot be crossed.²¹²

The trend of rising oppression and police violence against women's rights defenders can be clearly observed over the years based on the above-mentioned series of events. Rising restrictions and attacks on women's assemblies in Istanbul and other parts of the country demonstrate that women's rights defenders are no longer exempt from governmental oppression and attack, like many others who dare express criticism towards Government policies. While the situation in Ankara was not examined in detail within the scope of this report, it was reported during interviews that women's rights defenders in this city have been facing increased risks and restrictions, following the general trend of restrictions on freedom of assembly in the capital of Turkey.²¹³ A women's rights defender reported that there are indeed no valid reasons why they could not freely organise the assemblies they had been organising for years without any problems. Women's rights defenders are attempting to devise alternative methods to safely organise demonstrations over the next few years, but worry that the level of oppression could further increase and hinder their activities.²¹⁴

1.4. Environmental Rights Defenders

Environmental defenders have been in the forefront of the struggle for a more accountable and transparent political system for years. The construction boom and the dramatic increase in mining and energy projects, combined with a lack of meaningful participation by stakeholders in related decision-making processes, gave rise to civil resistance in rural as well as urban areas across Turkey. Indeed, the nation-wide Gezi Park protests in 2013 started as an environmental protest against the demolition of a park in the heart of the city to construct a shopping mall, without meaningful consultation with the public.

Environmental activism had been a low-risk area for defenders relative to other more sensitive issues, such as those detailed in previous sections. In particular, local movements that included

²¹⁰ The protest consisted of the chant "A Rapist in Your Path" ("*Un violador en tu camino*") and the dance performance was created by the Chilean feminist group Las Tesis to protest violence against women, including systemic violence by the police, by dismantling patriarchal power structures. It was staged to mark the International Day for the Elimination of Violence Against Women on November 25, 2019. The protest went viral on social media and was later re-performed by women all around the world, becoming intertwined with other political causes and adapted to local struggles.

²¹¹ For more details about this case please see, The Observatory, Press Release on Turkey: Women's Rights Defenders in the Crosshairs, (December 20, 2020) available at: <https://www.fidh.org/en/issues/human-rights-defenders/turkey-women-s-rights-defenders-in-the-crosshairs>.

²¹² FIDH Online Interview no. 4 in May 2020 with a civil society representative.

²¹³ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

²¹⁴ FIDH Online Interview no. 4 in May 2020 with a civil society representative.

villagers and farmers gained sympathy from the general public. Nevertheless, environmental groups have been hit hard by the restrictions on the right to freedom of assembly, and many of their protests were met with a disproportionate use of force by the police and private security agents alike. As the rule of law deteriorated and impunity became the norm in Turkey over the past few years, attacks on environmental rights defenders also gained momentum, and more serious violations occurred. Currently, it is reported that even reading a press statement outdoors has become a challenge, and the ongoing bans on assemblies have had an adverse impact on environmental rights defenders' activities as well.²¹⁵

Most significantly, the environmental movement regained momentum at the national level in August 2019, following the cutting down of a large forest 40 km away from Kazdağları National Park by the Turkish subsidiary of the Canadian gold-mining company Alamos Gold.²¹⁶ The issue received nation-wide attention, and hundreds of people from in and outside of the region visited the mining site to protest the company's activities. A local group of environmental defenders have now been camping near the site to monitor the company's activities for almost a year. To date, the police have not forcefully dispersed the environmental defenders organising assemblies in the area. Nevertheless, other harassment strategies were implemented throughout this period.

First, various groups, including pro-Government ones, started a smear campaign against the environmental defenders and civil society organisations leading the campaign in Kazdağları. Among the accusations raised against the organisers by a nationalist-leftist group, the charge that one of the organisers is funded by the EU and is thus unpatriotic is particularly concerning, as it echoes similar initiatives taken by authoritarian regimes and that target foreign-funded organisations as a way to smear and obstruct civil society's work.²¹⁷ In addition, many Twitter accounts disseminated fake information about the protests. Unrelated pictures were shared, claiming that protesters left their waste in the camp site and forest area, and questioning the "sincerity" of their ecological intentions. The defenders were also accused of "misinforming the public" and "having nothing to do with green" by an AKP member for protesting the mining operations only after the cutting down of the trees was completed.²¹⁸

The attacks in the media were followed by harassment and criminalisation of the defenders, as has happened in many other cases. Environmental defenders were briefly investigated over allegations of "theft,"²¹⁹ subjected to administrative fines on different occasions for camping in the forest,²²⁰ and prevented from organising a walk from Ankara to the mining site, while facing arrest for the same reason.²²¹ Recently, as part of the public health measures against Covid-19, five environmental rights defenders were fined based on a local authority's decision forbidding "having a picnic, lodging, and flying drones in the forest," while the activities of the mining company continued without any disruptions during the pandemic.²²² The environmental defenders continue to face restrictions in accessing the forestry area near the mining site on grounds of public health (see section 10 below for more details). The above-mentioned acts of harassment have been perceived as a strategy to deter the environmental

215 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

216 See, BBC Türkçe, Kaz Dağları: Tüm yönleriyle tartışılmalı maden projesi (August 6, 2019). Available at: <https://www.bbc.com/turkce/haberler-turkiye-49245614>.

217 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>.

218 Sözcü, AKP'li Turan'dan Kaz Dağları Çıkışı (August 12, 2019). Available at: <https://www.sozcu.com.tr/2019/gundem/akpli-turandan-kaz-daglari-cikisi-5279563/>.

219 Evrensel, Kaz Dağları'nda yaşam savunucularına yönelik "Hırsızlık" oyunu da tutmadı (October 9, 2019). Available at: <https://www.evrensel.net/haber/388540/kaz-daglarinda-yasam-savunucularina-yonelik-hirsizlik-oyunu-da-tutmadı>.

220 Ekoloji Birliği, Kirazlı Balaban tesislerinde baskılara rağmen direniş sürüyor! (February 20, 2020). Available at: <https://ekolojibirligi.org/kirazli-balaban-tesislerinde-baskilara-ragmen-direnis-suruyor/>.

221 Evrensel, Kaz Dağları Dayanışması'nın Ankara'ya yürüyüşü engellendi (October 10, 2019). Available at: <https://www.evrensel.net/haber/388613/kaz-daglari-dayanismanin-ankaraya-yuruyusu-engellendi>.

222 Yeşil Gazete, Kazdağları'nda ruhsatsız şirkete izin, çadırlı nöbetçilere 57 bin lira ceza (May 11, 2020). Available at: <https://yesilgazete.org/blog/2020/05/11/kazdaglarinda-ruhsatsiz-sirkete-izin-cadirli-nobetcilere-57-bin-lira-ceza/>.

defenders from continuing their resistance against the mining project, and to delegitimise them in the eyes of the general public.

Local environmental defenders face other forms of harassment across Turkey. On the West coast, particularly in Aydın and Manisa, geothermal projects have triggered protests within local communities, and supported by local environmental organisations.²²³ On several occasions, conflict between the security forces and local communities intensified when companies tried to enter the project area in the presence of members of the gendarmerie, which are security forces based in rural areas. Local environmental defenders, in many cases led by women and the elderly, were met with police violence, tear gas, and water cannons. In August 2019, in Salihli, Manisa, 26 people, some of them elderly, were taken into custody after the gendarmerie dispersed a sit-in of local environmental rights defenders following a complaint by the company.²²⁴ In video footage taken by a protester, a gendarme can be heard asking another if he should "break the phone because the protester took a lot of videos and photos," after a protester dropped her phone.²²⁵ Similar to what happened in Kazdağları, several local environmental defenders were recently fined on the basis that they did not respect social distancing rules.²²⁶ Finally, environmental defenders in Salihli were informed in June 2020 of a criminal case launched against 33 of them in relation to the above-mentioned protest that took place a year ago.²²⁷

Ilisu dam, located in the South-East of Turkey, which threatens to flood the historical, cultural, and residential site of Hasankeyf located in the town of Batman, is another source of long-lasting controversy. The Ilisu dam project, as well as the campaign against the dam, gained momentum in the 90s and the project was suspended several times due to local and international campaigns to protect the historical site of Hasankeyf, yet it was resumed every single time.²²⁸ The construction of the dam was recently completed, and the floodgates were closed in July 2019. During 2019, resistance in and outside the region to the completion of the dam and the flooding of the area gained momentum, and an initiative was formed that includes civil society organisations and political parties.²²⁹ All activities and assemblies organised by the initiative faced serious restrictions. In July, ahead of a local action in the region as part of the international campaign "Big Jump" to protect water resources, the Governorate issued a 14-day blanket ban on assemblies in Hasankeyf. On the day of the activity, there were reported to be approximately 400 to 500 security forces in the area, and after negotiations, protestors were only allowed to read their press statement.²³⁰ In the following period, assemblies organised by political parties and civil society organisations also faced restrictions, police violence, and even judicial harassment.²³¹ For almost a month, protestors were taken into police custody every day and released the following day. A total of five blanket bans on assemblies in the area were imposed and the bans lasted from June

223 Bianet, Özer Akdemir Kızılcaköy'deki JES Direnişini Anlatıyor (December 5, 2018). Available at: <http://m.bianet.org/bianet/ekoloji/203242-oz-akdemir-kizilcakoy-deki-jes-direnisini-anlatiyor>.

224 Yeşil Gazete, Salihli'de JES protestosuna saldırı: 26 gözaltı, CHP'li vekil ve üç asker hastanelik (August 26, 2019). Available at: <https://yesilgazete.org/blog/2019/08/26/salihlide-jes-protestosuna-mudahale-26-gozalti-uc-asker-yarali-chpli-vekil-hastanelik-oldu/>.

225 Yeşil Gazete, Salihli'de JES protestosuna saldırı: 26 gözaltı, CHP'li vekil ve üç asker hastanelik (August 26, 2019). Available at: <https://yesilgazete.org/blog/2019/08/26/salihlide-jes-protestosuna-mudahale-26-gozalti-uc-asker-yarali-chpli-vekil-hastanelik-oldu/>.

226 Ekoloji Birliği, JES'e direnen köylülere 3 bin 150'er lira sosyal mesafe cezası verildi! (June 7, 2020). Available at: <https://ekolojibirligi.org/jese-direnen-koylulere-3-bin-150ser-lira-sosyal-mesafe-cezasi-verildi/>.

227 Ekoloji Birliği, Salihli'de JES'e Direnen Mahalleliye Bir Yıl Sonra Dava Açıldı (June 29, 2020). Available at: <https://ekolojibirligi.org/salihlide-jese-direnen-mahalleliye-bir-yil-sonra-dava-acildi/>.

228 For more information, please see, Initiative to Keep Hasankeyf Alive, The Ilisu Project (September 11, 2017). Available at: <http://www.hasankeyfgirisimi.net/ilisu-projesi-nedir/>.

229 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

230 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

231 FIDH Online Interview no. 8 in May 2020 with a civil society representative. Also see, Hasankeyfi Yaşatma Girişimi, Hasankeyf Koordinasyonu: Gençlere yönelik şiddet politikalarını durdurun! (August 7, 2019). Available at: <http://www.hasankeyfgirisimi.net/?p=1187&lang=tr>; Cumhuriyet, Hasankeyf için yürüyen HDP'lilere darp ve gözaltı (August 7, 2019). Available at: http://www.cumhuriyet.com.tr/haber/turkiye/1524228/Hasankeyf_icin_yuruyen_HDP_lilere_darp_ve_gozalti.html.

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until late October 2019.²³² A civil society actor emphasised that none of their assemblies were officially “allowed” in 2019, and that if they were to jump-start their activities and assemblies again, another ban would almost certainly be imposed.²³³

Another source reported that the oppression is felt acutely in the South-East of the country, even for environmental defenders.²³⁴ As human rights defenders, their position is to take a more comprehensive and intersectional approach vis-à-vis human rights violations, and to take into account the social, environmental, cultural, and political impacts of a destructive project. Distinct from environmental defenders based in other regions, defenders based in the South-East have been conducting their activities in an atmosphere of intense internal armed violence, and their environmental activism cannot be separated from those realities. This, in turn, results in the stigmatisation of the environmental defenders in the region, as they are considered by the authorities to be parties to the ongoing conflict.²³⁵ Some environmental defenders in the region have also been criminalised and judicially harassed for pointing out the connections between the ongoing conflict in the region and the dams being constructed, which were allegedly part of a security and displacement strategy by the Government.²³⁶ Ultimately, due to the oppression, very few assemblies are currently organised and the environmental movement has mostly withdrawn from public spaces.

On the other hand, despite the oppression, environmental defenders appear generally not to risk prolonged arbitrary detention, despite being judicially harassed on occasion.²³⁷ The grounds for judicial harassment can differ. It can take the form of accusations of “violating Law no. 2911” or fines on the basis of the Misdemeanour Law,²³⁸ while terrorism-related charges are more common for defenders in the South-East. The fact that the risks faced by environmental defenders are lower compared to other defenders does not, in any way, mean that they are immune from the arbitrary practices of the authorities. Considering the current state of oppression, if the situation is not addressed urgently it would not come as a surprise to see environmental defenders facing more and more serious threats on the basis of their legitimate activities.

1.5. Labour Rights Defenders

The state of emergency was a period where labour rights and other basic rights related to employment were violated on a large scale. During the emergency rule, approximately 135,000 civil servants, including human rights defenders, were dismissed and banned for life from holding public office, by emergency decrees.²³⁹ This figure rises to a total of 200,000 workers if those who lost their jobs in the private sector due to the state of emergency are also counted.²⁴⁰ Not only were thousands of people dismissed from their positions as public sector employees by emergency decrees based on their “alleged” connections to terrorist organisations, but they were also stigmatised, harassed, and prevented from working in the private sector. As a result, those targeted by these measures have been socially ostracised. What is more, as all judicial mechanisms were unavailable against the emergency measures, the victims were denied access to any legal remedies.

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232 TIHV, 01 Ocak 2019 ile 31 Ocak 2020 Tarihleri Arasında Valilik Yasakları Nedeniyle Kullanılamayan Toplanma ve Gösteri Yapma Hakkı (February 9, 2020). Available at: <https://tihv.org.tr/01-ocak-2019-ile-31-ocak-2020-tarihleri-arasinda-valilik-yasaklari-nedeniyle-kullanilamayan-toplanma-ve-gosteri-yapma-hakki/>.

233 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

234 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

235 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

236 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

237 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

238 Misdemeanour Law (*Kabahatler Kanunu*) no. 5326 published in the Official Gazette no. 25772 (duplicate), dated March 31, 2005, and entered into force on June 1, 2005.

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

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

Following consistent criticism by various bodies of the Council of Europe, in January 2017 an Inquiry Commission for State of Emergency Measures ("Inquiry Commission") was established to serve as a remedial mechanism against the emergency measures.²⁴¹ According to the data released by the Inquiry Commission, as of March 27, 2020 the Commission has ruled on 105,100 cases, corresponding to 83% of the total number of applications, and only 11,200 applications were accepted while 93,900 were rejected.²⁴² 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.²⁴³ Amid the lack of meaningful legal remedies, many dismissed public sector employees claimed public spaces to demand justice and their reinstatement. However, they were systematically prevented from gaining visibility in public spaces and faced police violence. For instance, in 2017, 167 out of 282 assemblies that were subjected to police intervention concerned dismissals by emergency decrees.²⁴⁴

In Ankara's Yüksel Street, former public sector employees have been protesting the situation for over 1,300 days through regular press statements, and have faced a severe risk of police violence, detention and administrative fines every single day.²⁴⁵ Human rights defenders who showed support to dismissed public sector employees were also subjected to arrest and administrative fines on the basis of the Misdemeanour Law.²⁴⁶ According to the data gathered by TIHV, in 2019 alone the police intervened in the gatherings in Yüksel Street 712 times, and resorted to detaining participants 1,594 times. In the first four months of 2020 (the latest data available), there have been 177 police interventions against the protestors in Yüksel Street, and the number of protestors taken into custody has reached 201.

On the other hand, long-standing problems, including the violations of workers' right to freedom of assembly and association, incrementally increased following the attempted coup. During the state of emergency, Emergency Decree no. 678²⁴⁷ expanded the provisions allowing the suspension of an official strike and lock-out, and vested the Council of Ministers with the power to postpone for a period of 60 days a strike and lock-out that could disrupt public order or public health. This provision was later integrated into ordinary law in 2018,²⁴⁸ and this authority was transferred to the President. In the state of emergency period, on the basis of this provision, seven strikes organised by different trade unions in a variety of sectors were "suspended" on the grounds of "national security," "public health," and "economic and financial stability."²⁴⁹

241 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>.

242 See, Announcement on the Decisions of the Inquiry Commission on the State of Emergency Measures (August 29, 2019). Available at: <https://soe.tccb.gov.tr/>.

243 See, IHOP, Is The State of Emergency Inquiry Commission, Established By Emergency Decree 685, an Effective Remedy? (February 2017).

244 ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu 2017, p.42 (2018). Available at: https://www.esithaklar.org/wp-content/uploads/2019/06/Toplantı_Gosteri_Hakki_2017.pdf.

245 See, TIHV, Documentation Center Daily Human Rights Report. Available at: <http://en.tihv.org.tr/>.

246 According to İHD's Special Report on Increased Pressure on HRDs, İHD and Its Executives, published on June, 21, 2018: "İHD Co-Chair Öztürk Türkdoğan, İHD board members Sevim Salihoğlu and Derya Uysal, İHD worker Besra Varlı were forcefully detained during a public statement on 9 November 2017 concerning dismissals from public duty and regular protests staged on Yüksel Street in Ankara. They were all given a fine of TL 277 each under the Law of Misdemeanors. The İHD appealed to the Constitutional Court. Chair of İHD's İstanbul Branch and member of the Central Executive Board Gülseren Yoleri and members of the İstanbul branch were arrested on 5 August 2017 for taking part in a public statement concerning dismissals from public duty through decree laws. After a 3-day police custody, they were released under judicial control and with a travel ban. An investigation was also launched on charges of violating the Law on Meetings and Demonstrations." Report available at: <https://ihd.org.tr/en/special-report-increased-pressure-on-hrds-ihd-and-its-executives/>.

247 Article 35 of the Emergency Decree no. 678 published in the Official Gazette no. 29896 and dated November 22, 2016 and entered into force on the day of publication.

248 Article 32 of the Law no. 7071 published in the Official Gazette (duplicate version) no. 30354 and dated March 8, 2018 and entered into force on the day of publication.

249 Evrensel, 2 yıllık OHAL'in bilançosu: Grev yasakları, sansür, baskı, hak ihlali... (July 19, 2018). Available at: <https://www.evrensel.net/haber/357200/2-yillik-ohalin-bilancosu-grev-yasaklari-sansur-baski-hak-ihlali>.



Ali Seker (C), lawmaker of the main opposition Republican People's Party (CHP), wearing face masks for protection against the novel coronavirus, COVID-19 holds a wreath, as the police block the march during International Labour Day rally near Taksim in Istanbul, on May 1, 2020, as the country tries to curb the spread of the coronavirus. Police in Istanbul detained several demonstrators who tried to march toward Istanbul's symbolic Taksim Square to mark May Day in defiance of the lockdown imposed by the government due to the coronavirus outbreak. © Ozan KOSE / AFP

In addition to official strikes, other assemblies organised by trade unions critical of the Government were regularly restricted and met with police violence. A trade unionist reported that from the beginning of the state of emergency, regular press events they organised in the symbolic locations of Ankara were constantly banned, and protesters were subjected to repressive measures including administrative fines and detention.²⁵⁰ In particular, press statements, sit-ins, and other assemblies to show solidarity with the dismissed public sector employees were heavily criminalised, and the police used excessive force against the protesters. In some instances, assemblies were immediately dispersed by force after the protesters started shouting the names of dismissed public sector employees, on the basis that they thus "turned into an illegal assembly."²⁵¹ It was also reported that the criminal complaints concerning alleged police brutality did not succeed, following the general trend.²⁵² On the other hand, trade unionists mentioned the double standards that are applied to different groups and emphasised that trade unions with closer relations to the Government can express their views by organising assemblies without any restrictions or police violence.²⁵³

To date, International Labour Day demonstrations have been a major source of controversy between the authorities and labour rights defenders. International Labour Day demonstrations have long been banned in Taksim Square, except between 2010 and 2012; nevertheless, labour rights defenders strive to gather in Taksim Square due to its symbolic meaning and also to

250 FIDH Online Interview no. 11 in May 2020 with a civil society representative.

251 Evrensel, Nuriye ve Semih'den bahsedince polis saldırdı (October 21, 2017). Available at: <https://www.evrensel.net/haber/335829/nuriye-ve-semihden-bahsedince-polis-saldiridi>.

252 FIDH Online Interview no. 11 in May 2020 with a civil society representative.

253 FIDH Online Interview no. 11 in May 2020 with a civil society representative.

protest the arbitrary ban imposed in the heart of the city. As a result, almost every year videos of police violence flood the media, alongside the news of protesters being taken into custody. In 2017, for example, Taksim Square was once again closed to demonstrations and at least 165 people were taken into police custody,²⁵⁴ while in 2018 at least 78 were taken into police custody in the neighbourhoods surrounding Taksim Square.²⁵⁵ In 2019, once again the police took at least 127 people into custody all across Istanbul.²⁵⁶ In 2020, large scale demonstrations were not organised due to the Covid-19 pandemic, yet the police took into custody 15 trade union representatives who tried to reach Taksim Square to leave flowers in commemoration of those who were murdered in 1977 during International Labour Day demonstrations (see section 10 below for more details).

The restrictions on International Labour Day demonstrations are not limited to Taksim Square. In Ankara, although demonstrations were not banned in 2017, labour rights defenders faced limitations in relation to the banners they were holding. Protestors holding banners that included the words "emergency rule" and "emergency decree" were only allowed into the area after they removed those words from their banners.²⁵⁷ Similarly, "no to dictatorship" banners did not make it into the demonstration area.²⁵⁸ In 2018, "permission" for demonstrations in Ankara was initially refused by the Governorate on the grounds that the "submitted slogans and press statements were not in compliance with the legislation," and that some slogans "target public institutions and political parties" and "insult the military operations,"²⁵⁹ whereas the second application was approved and the demonstrations were allowed to take place.²⁶⁰ In 2019, the demonstrations were allowed to take place, and the mass demonstration was held in a peaceful and festive manner without any major issues.²⁶¹

The crackdown on labour rights defenders did not slow down following the end of the emergency rule. The most significant incident was the arrest and judicial harassment of the workers who gathered at a construction site at Istanbul Airport to protest their poor working conditions, and ceased work in September 2018.²⁶² On the night of the protests, the gendarmerie raided the dormitories of the workers, broke down the doors, and took into custody approximately 400 workers. Over the next days, more than 30 of these workers were placed in pre-trial detention, and a criminal investigation was launched against 61 workers and trade unionists on accusations of "disrupting the freedom to work," "damaging public property," "resisting the police," and "possessing weapons during public assemblies and demonstrations."²⁶³ The workers were reportedly not allowed to see their lawyers for almost four days, while company officials could freely enter the police premises where the workers were being questioned, in blatant contradiction of domestic and international fair trial and defence rights.²⁶⁴ The workers and trade unionists were also subjected to a smear campaign

254 ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu 2017, pp. 32-33 (2018). Available at: https://www.esithaklar.org/wp-content/uploads/2019/06/Toplantı_Gosteri_Hakki_2017.pdf.

255 ESHID, Toplantı ve Gösteri Hakkı İzleme Bülteni Nisan-Haziran 2018.

256 ESHID, Toplantı ve Gösteri Hakkı İzleme Bülteni Nisan-Eylül 2019. Available at: https://www.esithaklar.org/wp-content/uploads/2019/11/toplantı_ve_gosteri_hakki_izleme_2019_nisan_eylul-1.pdf.

257 ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu 2017, p. 34 (2018).

258 ESHID, Toplantı ve Gösteri Hakkı İzleme Raporu 2017, p. 35 (2018).

259 Birgün, Valilikten bir garip ret gerekçesi: "1 Mayıs yürüyüşü emek güçlerinin kuruluşuna aykırı" (April 18, 2018). Available at: <https://www.birgun.net/haber/valilikten-bir-garip-ret-gerekcesi-1-mayis-yuruyusu-emek-guclerinin-kurulusuna-aykiri-212636>.

260 Evrensel, Ankara'da 1 Mayıs'a izin verildi (April 20, 2018). Available at: <https://www.evrensel.net/haber/350546/ankarada-1-mayisa-izin-verildi>.

261 Evrensel, Ankara'da 1 Mayıs: Emekçiler "Kıdem tazminatıma dokunma" dedi (May 1, 2019). Available at: <https://www.evrensel.net/haber/378567/ankarada-1-mayis-emekciler-kidem-tazminatima-dokunma-dedi>.

262 See, BBC Türkçe, İstanbul Yeni Havalimanı eylemleri: İşçiler ne talep ediyor, ana firma İGA taleplere ne diyor? (September 20, 2018). Available at: <https://www.bbc.com/turkce/haberler-turkiye-45559105>; also see, IHD, İstanbul 3. Havaalanı İşçilerinin Durumuna İlişkin Gözlem Raporu (September 18, 2020). Available at: <https://www.ihd.org.tr/istanbul-3-havaalani-iscilerinin-durumuna-iliskin-gozlem-raporu/>.

263 Bianet, 3. Havalimanı İşçileri Davası Başlıyor (December 4, 2018). Available at: <http://bianet.org/bianet/insan-haklari/203180-3-havalimani-iscileri-davasi-basliyor>; Front Line Defenders, Judicial harassment of trade unionists and construction workers (November 30, 2018). Available at: <https://www.frontlinedefenders.org/en/case/judicial-harassment-ozgur-karabulut>.

264 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

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in the media, suggesting that the protests were orchestrated by terrorist organisations in an attempt to incite chaos days before the opening of the airport.²⁶⁵ A civil society actor reported that the official indictment echoed the language used in the smear campaign, which claimed that the workers were trying to impede the economic development of Turkey and to discredit the Government in front of its foreign counterparts.²⁶⁶ Following the first hearing in December 2018, the workers were released after three months of detention, though they remained on probation and subject to a travel ban. During the second hearing in March 2019, these measures were lifted, though the criminal case is still pending.²⁶⁷

J. Impacts of Covid-19 on Freedom of Assembly

The Covid-19 pandemic and the accompanying lockdown measures have had inevitable impacts on civil society's right to freedom of assembly. Due to the lockdown measures and the ban on mass gatherings, and similarly to what happened in many other countries affected by the pandemic, many civil society actors have chosen to cancel in-person meetings and assemblies, and diverted their activities to online platforms. Thus, as a matter of fact, there have been many fewer people going out to exercise their right to freedom of assembly since the outbreak. On the other hand, there were others who still attempted to organise assemblies for various reasons, and were prevented from doing so and/or faced fines.

Indeed, restrictions on freedom of assembly on the basis of public health concerns may be justifiable, provided that they meet international standards for rights limitations in times of emergency. Namely, in order to be lawful under international law, restrictions on human rights and fundamental freedoms must be necessary and proportionate, prescribed by law, limited in time, and non-discriminatory in nature. Derogation clauses, allowing States to temporarily suspend these rights – enshrined in international treaties and conventions that they have ratified – during national emergencies, are included in several international law instruments that Turkey has signed on to. These instruments permit derogation on condition that States comply with the aforementioned criteria, and that the State party has notified the relevant international bodies tasked with monitoring their respect, indicating the specific rights that have been derogated from and the reasons for the suspension.²⁶⁸ The UN Special

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265 For example see, Sabah, 2. Gezi Provokasyonu (September 16, 2018). Available at: <https://www.sabah.com.tr/ekonomi/2018/09/16/2-gezi-provokasyonu>; Yeni Şafak, 3. Havalimanı'nda Provokasyon (September 16, 2018). Available at: <https://www.yenisafak.com/gundem/3-havalimaninda-provokasyon-3395948>.

266 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

267 For the most recent information, please see, Keep the Volume up for the Rights Defenders in Turkey, Workers of the Third Airport (December 3, 2019). Available at: <https://www.sessizkalma.org/en/defender/workers-of-the-third-airport/>.

268 Article 4 of ICCPR:

(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

(2) No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

(3) Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 15 of ECHR titled "Derogation in time of emergency":

(1) Derogation in time of emergency. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

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Rapporteur on the right to peaceful assembly and association underlined most recently in a press statement, issued at the peak of the Covid-19 outbreak in April 2020, that:

It is inadmissible to declare blanket restrictions on human rights and fundamental freedoms. Exemptions should be foreseen for civil society actors, particularly those monitoring human rights, trade unions, social services providing humanitarian assistance, and journalists covering the management of the crisis. (...) It is imperative the crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly and of association in particular.²⁶⁹

Having this international legal framework in mind, it appears that Turkey has not fully complied with those standards in implementing public health measures related to the Covid-19 pandemic, particularly with regard to the limitations imposed on the right to peaceful assembly. Blanket bans were imposed in some cases without taking into account the objectives of particular assemblies and the actual risks they could pose to public health,²⁷⁰ without ensuring that restrictions were limited to what was strictly required by the situation,²⁷¹ and that no other, less intrusive means, were available to respond to the public emergency without disproportionately limiting this constitutionally-protected right. Even small gatherings, in secluded areas in certain cases, have been prevented, even while lockdown measures were being lifted across Turkey, putting the necessity and the proportionality of those restrictions in question. The incidents mentioned below led many civil society actors to believe that lockdown measures were used by the authorities rather as another pretext to further crack down on fundamental rights and on civil society, for which the pandemic offered the perfect justification.²⁷²

According to the data released by TIHV,²⁷³ between January 1, 2020 and June 1, 2020 (which includes the period during which anti-Covid-19 measures were in place)²⁷⁴, the police used force during at least 363 peaceful assemblies and events and took 754 people into custody, while 16 people were injured. Among those incidents, nine assemblies and events were subjected to the use of force on the grounds of anti-Covid-19 measures, and 42 demonstrators were taken into custody on these occasions. Furthermore, during the same period, in a further 17 cases, although not directly related to the freedom of assembly, the police used force against 29 people for not complying with anti-Covid-19 measures, and four of those were injured due to use of force and firearms by the police.²⁷⁵

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269 UNOHCHR, "States responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule (April 14, 2020). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>.

270 In the cities of Siirt and Kocaeli, the authorities imposed blanket bans on all indoor and outdoor assemblies. For more information, see, TIHV, Türkiye'de İlk Vakanın Tespit Edildiği 11 Mart – 10 Mayıs 2020 Tarihleri Arasında Yaşanan Covid-19 ile İlişkili Hak İhlalleri Raporu, p. 29. Available at: <https://tihv.org.tr/wp-content/uploads/2020/05/Tu%CC%88rkiyeCovidHakI%CC%87hlalleriSON.pdf>.

271 Article 4.1 ICCPR; Article 5.1 ECHR, see footnote 258.

272 Ekoloji Birliği, Ekoloji Birliği'nden tepki: Kuyucular ve Beyköy halkına kesilen para cezaları geri alınsın! (June 11, 2020). Available at: <https://ekolojibirligi.org/ekoloji-birliginden-tepki-kuyucular-ve-beykoy-halkina-kesilen-para-cezaları-geri-alinsin/>.

273 See, TIHV, Türkiye İnsan Hakları Vakfı ve İnsan Hakları Derneği Şiddete Karşı Tutum Belgesi (June 9, 2020). Available at: <https://tihv.org.tr/basin-aciklamaları/türkiye-insan-hakları-vakfı-ve-insan-hakları-derneği-siddete-karsi-tutum-belgesi/>.

274 The first official case of Covid-19 in Turkey was confirmed on March 11, 2020. Following the first official case, Turkey went under a partial lockdown, during which some businesses were ordered to close, those over 65 and minors were locked-down, intercity travel was banned, and weekend curfews were implemented in major cities. The measures have been gradually loosening since June 1, 2020, with most of the measures affecting daily life already lifted.

275 TIHV, Türkiye İnsan Hakları Vakfı ve İnsan Hakları Derneği Şiddete Karşı Tutum Belgesi (June 9, 2020). Available at: <https://tihv.org.tr/basin-aciklamaları/türkiye-insan-hakları-vakfı-ve-insan-hakları-derneği-siddete-karsi-tutum-belgesi/>.

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In some cases, civil society actors and other right-holders were subjected to monetary fines for the assemblies they organised during the Covid-19 pandemic. In particular, environmental defenders were disproportionately affected by the situation. While mining and energy companies were largely allowed to continue their activities during the lockdown, environmental defenders were not allowed to go out to protest those activities. Furthermore, lockdown measures and health concerns forced many people to stay at home, and the court cases against the destructive projects were also suspended since the courts temporarily ceased their activities during the pandemic. This was – according to some sources – used as an opportunity by the companies to resume and/or accelerate their operations, which had previously been suspended due to public outrage. Civil society actors also lamented not being able to rally support among the local communities against the destructive projects, worrying that they would face fines for violating lockdown measures.²⁷⁶ Recent developments following the loosening of the anti-Covid-19 measures on June 1, 2020 further increased concerns that those measures were being used as a pretext to curb the opposition and crush dissent.

Box #8 – Harassment of Environmental Defenders Based on anti-Covid-19 Measures

Indeed, environmental defenders were subject to fines on this very basis in several instances. As mentioned in section 9b above, five environmental defenders resisting against a gold mine project were subjected to a fine of 57,000 TRY (approximately 7,400 EUR) in total based on a local authority's decision forbidding "having a picnic, lodging, and flying drones in the forest," while the activities of the mining company continued without any disruption.²⁷⁷ The fine was issued despite the environmental defenders' announcement at the beginning of the pandemic that they had limited the number of people at the campsite to seven and were isolating themselves from the general public.²⁷⁸ It is indeed questionable whether environmental defenders isolated in a forestry area and allegedly respecting social distancing measures posed public health risks. In June 2020, after most of the Covid-19-related restrictions were lifted nationwide, two environmental defenders on their way to join the aforementioned camping site were taken into police custody based on the same local authority's decision respecting public health measures, and later released on the condition that they wouldn't enter the camping site.²⁷⁹ At the time of writing, some environmental defenders are still facing obstacles in exercising their right to assemble near the mining site to show their support to the defenders who had been camping in the area; the authorities have impeded them on various grounds, including public health and safety, although the majority of the anti-Covid-19 measures have been lifted and daily life went back to normal as of June 1.²⁸⁰

Similarly, at least 35 local environmental defenders in Aydın, who were resisting against a geothermal project, were informed in June 2020 that they were going to be each subjected to a fine of 3,150 TRY (approximately 400 EUR) for violation of the

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

277 Yeşil Gazete, Kazdağları'nda ruhsatsız şirkete izin, çadırılı nöbetçilere 57 bin lira ceza (May 11, 2020). Available at: <https://yesilgazete.org/blog/2020/05/11/kazdaglarinda-ruhsatsiz-sirkete-izin-cadirili-nobetcilere-57-bin-lira-ceza/>.

278 Yeşil Gazete, Kazdağları'ndaki çadırılı nöbet koronavirus bahanesiyle sonlandırılmak isteniyor (April 21, 2020). Available at: <https://yesilgazete.org/blog/2020/04/21/kazdaglarindaki-cadirili-nobet-koronavirus-bahanesiyle-sonlandirilmak-isteniyor/>.

279 Ekoloji Birliği, Kirazlı çadır direnişçileri yalnız değildir, gözaltı girişimi kabul edilemez! (June 9, 2019). Available at: <https://ekolojibirligi.org/ekoloji-birligi-kirazli-cadir-direniscileri-yalniz-degildir-gozalti-girisimi-kabul-edilemez/>.

280 Ekoloji Birliği, Kazdağları için topyekün mücadele: Nöbet de eylemler de sürüyor! (June 16, 2020). Available at: <https://ekolojibirligi.org/kazdaglari-icin-topyekun-mucadele-nobet-de-eylemler-de-suruyor/>.

Public Health Law, for reasons such as not wearing a mask and not respecting social distancing measures during their protest on April 17.²⁸¹ Allegedly, thinking that the pandemic could be an opportunity to resume the operations that were suspended due to local resistance, the geothermal company started to carry some equipment to the project area, and the local environmental defenders gathered in protest against the company's activities once again.²⁸² Some defenders reported that the gendarmerie was present during the demonstrations, and that the protestors respected social distancing rules and wore masks as per the mandate of the gendarmerie. It is believed that, on this occasion too, the Covid-19 pandemic was used as an "excuse" to break the local resistance.²⁸³

Demonstrations on International Labour Day were also practically banned, as the authorities announced a three-day lockdown in 31 cities between May 1 and 3, 2020.²⁸⁴

Box #9 – International Labour Day Demonstrations in Taksim during the Covid-19 Pandemic

A small gathering by labour rights defenders in Taksim Square on International Labour Day on the first of May was met with police violence, although the authorities could easily ensure that the gathering respected social distancing rules. The conflict stemmed from the number of people that would be allowed to be present in Taksim Square: it was limited to 10 by the authorities due to Covid-19 lockdown measures, but the trade union requested permission for a slightly bigger group, to allow adequate representation of their member organisations.²⁸⁵ On the day of the gathering, the police took into custody 15 trade union representatives after what appears to have been a close physical confrontation between the labour rights defenders and the police.²⁸⁶ They were each subjected to a fine of 3,180 TRY (approximately 400 EUR) and then released.²⁸⁷ The measures' rationale was never understood by the labour rights defenders, as they were not allowed to protest in a small group, while many workers were forced to continue working in what they considered unsafe conditions during the pandemic.²⁸⁸ It was also reported that on the same day, although there was a lockdown in force for the general public, and the authorities prevented the demonstration, construction operations in Taksim Square were ongoing, and many people were also out for other reasons.²⁸⁹ This increased the perception among the demonstrators that the restrictions imposed on them were rather a pretext to prevent them from exercising their right to protest, than legitimate limitations on public health grounds.

281 Ekoloji Birliği, Ekoloji Birliği'nden tepki: Kuyucular ve Beyköy halkına kesilen para cezaları geri alınsın! (June 11, 2020). Available at: <https://ekolojibirligi.org/ekoloji-birliginden-tepki-kuyucular-ve-beykoy-halkina-kesilen-para-cezaları-geri-alinsin/>; Birgün, Aydın'da jeotermallere karşı direnen köylülere 3 bin 150 lira para cezası (June 7, 2020). Available at: <https://www.birgun.net/haber/aydin-da-jeotermallere-karsi-direnen-koylulere-3-bin-150-lira-para-cezasi-303659>.

282 Ekoloji Birliği, JES'e direnen köylülere 3 bin 150'şer lira sosyal mesafe cezası verildi! (June 7, 2020). Available at: <https://ekolojibirligi.org/jese-direnen-koylulere-3-bin-150ser-lira-sosyal-mesafe-cezasi-verildi/>.

283 Ekoloji Birliği, JES'e direnen köylülere 3 bin 150'şer lira sosyal mesafe cezası verildi! (June 7, 2020).

284 TIHV, Türkiye'de İlk Vakanın Tespit Edildiği 11 Mart – 10 Mayıs 2020 Tarihleri Arasında Yaşanan Covid-19 ile İlişkili Hak İhlalleri Raporu, p. 28.

285 FIDH Online Interview no. 8 in May 2020 with a civil society representative.

286 Deutsche Welle Türkçe, Koronavirüs kısıtlamaları altında olaylı 1 Mayıs kutlamaları (May 1, 2019). Available at: <https://www.dw.com/tr/koronavir%C3%BCs-k%C4%B1s%C4%B1tlamalar%C4%B1-alt%C4%B1nda-olayl%C4%B1-1-may%C4%B1s-kutlamalar%C4%B1-a-53301627>.

287 TIHV, Türkiye'de İlk Vakanın Tespit Edildiği 11 Mart – 10 Mayıs 2020 Tarihleri Arasında Yaşanan Covid-19 ile İlişkili Hak İhlalleri Raporu, p. 28.

288 Deutsche Welle Türkçe, Koronavirüs kısıtlamaları altında olaylı 1 Mayıs kutlamaları (May 1, 2019).

289 FIDH Online Interview no. 8 in May 2020 with a civil society representative.



A senior lawyer protesting against a draft bill governing the organisation of bar associations holds up a placard during a rally in front of Turkish riot policemen blocking the road, in Ankara on June 22, 2020. Lawyers claim that the draft bill is aimed at silencing those critical of the government. © Adem ALTAN / AFP

Most recently, on July 2, 2020, the Governorate of Ankara banned all assemblies in the city for a period of 15 days based on a decision of the Public Health Committee, which stated that the number of Covid-19 cases in the city had increased in the preceding days.²⁹⁰ This ban was introduced against the backdrop of ongoing protests by lawyers against a draft bill that would allow a structural change in the organisation of bar associations.²⁹¹ The lawyers were planning to organise a mass demonstration in the very same week to protest the draft bill, which was under consideration by the National Assembly and has been criticised by civil society and the political opposition as an attempt to gain control over bar associations and diminish their powers. On June 19, the presidents of many bar associations started a march from their home towns to Ankara in order to raise their voices against the draft bill.²⁹² They were prevented from entering Ankara as a group on June 22 on various grounds, including the pandemic, that the proposed route of the demonstration was not among the designated areas, and that demonstrations were not permitted on intercity roads.²⁹³ After a 24-hour sit-in

²⁹⁰ T24, Ankara Valiliği "Covid-19 vakaları artıyor" dedi, baroların Büyük Savunma Mitingi öncesinde eylemleri yasakladı! (July 2, 2020). Available at: <https://t24.com.tr/haber/barolar-buyuk-savunma-mitingi-icin-cagri-yapmisti-ankara-da-her-turlu-toplanti-yuruyus-ve-gosteri-yasaklandi,888124>.

²⁹¹ The draft bill followed a series of events starting with a speech by the President of Religious Affairs targeting LGBTI+ individuals on April 24, 2020, and the publication of statements by several bar associations condemning the hateful discourse, which were not taken well by the authorities. For more details, see, ILGA-Europe, Joint Statement: End hate speech and targeted attacks against LGBTI people in Turkey (May 8, 2020). Available at: <https://www.ilga-europe.org/resources/news/latest-news/joint-statement-end-hate-speech-and-targeted-attacks-against-lgbti-people>. The draft bill 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 in the Union of Bar Associations. It is perceived as an attempt to silence bar associations and gain control over them, while it was presented by the Government as a bill that would ensure plurality and democracy within bar associations.

²⁹² Evrensel, Baro başkanlarının Ankara'ya "Savunma Yürüyüşü" başladı (June 19, 2020). Available at: <https://www.evrensel.net/haber/407482/baro-baskanlarinin-ankaraya-savunma-yuruyusu-basladi>.

²⁹³ Bianet, Lawyers prevented from entering Ankara: 'This is total lawlessness' (June 22, 2020). Available at: <https://bianet.org/bianet/yasakli-ankara-avukatlarin-ankara-ya-girmemesi-2020>.

under police blockade, the presidents of the bar associations were allowed to continue their symbolic march to Ankara.²⁹⁴ The sit-in outside the National Assembly continued while the draft bill was being discussed; the bill was eventually adopted by the National Assembly on July 11, 2020 and entered into force on July 15, 2020.²⁹⁵

Finally, civil society actors also pointed out the double standards applied to civil society organisations and groups with closer connections to the Government.²⁹⁶ For instance, following the death of a hunger striker from the famous folk music band Grup Yorum in May 2020, some right-wing groups alleged to have connections to Milliyetçi Hareket Partisi ("MHP" – Nationalist Movement Party), a nationalist party in the Government alliance, took to the streets in Kayseri to prevent the burial of the hunger striker in the city, claiming that he was a terrorist, and threatened to burn his corpse.²⁹⁷ The group stayed on the streets for around two hours despite the Covid-19 pandemic and its related measures, and left the area only after the police arrived. On the other hand, many assemblies to show condolences to the deceased, including the one in his own neighbourhood in Istanbul, were dispersed by the police with tear gas, and some demonstrators were taken into police custody and subjected to fines.²⁹⁸ Many others were prevented from joining his funeral on the very basis of Covid-19 measures.²⁹⁹

The above-mentioned cases testify to an increased disrespect by the authorities for the right to freedom of assembly in Turkey during the Covid-19 pandemic, and to an extent beyond what would be legitimate and lawful under international law for rights derogations during a national emergency. Based on civil society actors' testimonies, it indeed appears that the pandemic has been used by the authorities so far as another "pretext" to further crack down on civil society, which is already weakened by a four years-long repression, rather than as a legitimate reason to lawfully and proportionally restrict this right for public health purposes.

bianet.org/english/law/226105-marching-lawyers-prevented-from-entering-ankara-this-is-total-lawlessness; also see, Birgün, Baro başkanlarına polis engeli: Valilik yürüyüşe izin vermiyor (June 22, 2020). Available at: <https://www.birgun.net/haber/baro-baskanlarina-polis-engeli-valilik-yuruyuse-izin-vermiyor-305533>.

294 Gazete Karınca, Kararlılığın sonucu: Baro başkanları Ankara'ya girdi, yürüyüş sona erdi (June 23, 2020). Available at: <https://gazetekarınca.com/2020/06/kararlıligin-sonucu-baro-baskanlari-ankaraya-girdi-yuruyus-sona-erdi/>.

295 See, BBC Türkçe, Çoklu Baro yasa teklifi TBMM Genel Kurulu'nda kabul edilerek yasalaştı (July 11, 2020). Available at: <https://www.bbc.com/turkce/haberler-turkiye-53371906>. For the text of the newly adopted law please see, 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.

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

297 Evrensel, Kayseri'de İbrahim Gökçek'in mezarına saldırı girişimi (May 11, 2020). Available at: <https://www.evrensel.net/haber/404406/kayseride-ibrahim-gokcekin-mezarina-saldiri-girisimi>.

298 Twenty-six people, including two children, were taken into police custody during the commemoration in Istanbul. They were each fined 1,000 TRY (130 EUR) for not following the social distancing rules. One woman was injured in her face as a result of police violence. On May 8, 2020, police raided Gazi Cemevi, the religious site where the body of the hunger striker was kept, and took the body. Eighteen people, including lawyers, were taken into police custody, following the use of pepper spray and rubber bullets. Finally, during the funeral in Kayseri, one person was taken into police custody. Also, police did not let a member of Grup Yorum make a speech at the funeral and used physical violence against others who wanted to sing a Grup Yorum song at the end of the funeral. See, TIHV, Documentation Center Daily Human Rights Report – 05/071 & 05/063 Police Intervention to Funeral of İbrahim Gökçek. Available at: <https://en.tihv.org.tr/page/4/>. Also see, Bianet, İbrahim Gökçek'in Cenazesi Kayseri'ye Götürüldü (May 8, 2020). Available at: <http://bianet.org/bianet/siyaset/224029-ibrahim-gokcek-in-cenazesi-kayseri-ye-goturuldu>.

299 Evrensel, İbrahim Gökçek'in cenazesi engellemelerle toprağa verildi (May 8, 2020). Available at: <https://www.evrensel.net/haber/404210/ibrahim-gokcekin-cenazesi-engellemelerle-topraga-verildi>.

IV - CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The situation in which civil society operates in Turkey has been going downhill since 2013. Freedom of assembly, along with freedom of association and freedom of speech, has been the target of retrogressive laws and policies, in complete disregard of Turkey's constitutional obligations and international engagements. The decline in the rights of civil society actors is symptomatic of a wider degradation of the rule of law and of democratic checks and balances, including judicial independence, in Turkey. This Report has sought to document and expose the situation in which civil society operates, by focusing – in this first part – on the fundamental right to peaceful assembly; by showing how it has been gradually undermined through restrictive legislation and the arbitrary practices of the authorities; and by documenting how this right's limitations have affected civil society actors' ability to exercise their fundamental watchdog role in defence of human rights and democracy.

The findings of this Report indicate not only a gap between the State's international human rights obligations and the domestic legislation that restricts freedom of assembly, but also reveal the State's intensified attempts to undermine the right through a hostile narrative and the authorities' arbitrary enforcement of the law. The Report depicts an environment in which the fundamental right to express dissent through peaceful protest has been restricted and repressed by the authorities, to an extent that its exercise has become dangerous for civil society actors. As a consequence, the latter find themselves operating in an increasingly hostile environment, where conducting legitimate human rights work and protesting public policies that curtail rights and freedoms has become a high-risk activity, one likely to expose them to serious consequences which hinder their work and, in some cases, threaten their very freedom.

In the period following the Gezi Park protests in 2013, freedom of assembly was severely undermined, as public space became less and less accessible to those who wanted to organise peaceful demonstrations to express dissent. The situation escalated until the state of emergency was declared, striking a final blow against the freedom of assembly. Through its legislative amendments, the Executive maintained a substantial amount of its extraordinary powers even after the end of the emergency rule, the most significant for the purposes of this Report being the authority granted to the governors to restrict freedom of movement and assembly up to 15 days, which provides the grounds for the latter to declare blanket bans on freedom of assembly. Those powers, already restrictive in nature, were implemented arbitrarily by the authorities, and many assemblies were pre-emptively banned based on generic and abstract grounds such as "public safety and security," "prevention of crime," "protections of rights and freedoms of others," "public health," and "public morality," without providing a reasoning and assessment specific to each case, as detailed in the previous sections.

Widespread bans on assemblies prevented citizens, civil society actors, and HRDs from raising their voices through public assemblies in many cases, while those who took to the streets despite the bans faced police violence, judicial harassment, and stigmatisation. The mere fact that an assembly was "unauthorised" provided the police with the legal basis to disperse protesters and use force against them. Civil society actors and HRDs from various backgrounds, including Kurdish rights defenders, women's rights defenders, LGBTI+ rights defenders, environmental rights defenders, and labour rights defenders, have faced increased oppression and their credibility has been openly challenged by the authorities. The situation was further exacerbated by the long-lasting impunity of the perpetrators of abuse, including police violence, and the lack of timely, effective and – in some cases – impartial intervention by the courts.

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The above-stated restrictions established a climate of fear, in which civil society actors feel oppressed, silenced, and prevented from raising their legitimate concerns in relation to human rights, the rule of law, and democratic principles. Today, many civil society actors still believe that Turkey is living through a *de facto* state of emergency, in which the fundamental tenets that characterise consolidated democracies based on the rule of law have been set aside, and where rights and freedoms, including the freedom of assembly, are gradually being restricted and essentially emptied of meaning.

In this context, the Government of Turkey insists on professing its commitment to its international engagements, including to the process of European integration – currently frozen following the country's democratic backsliding after the attempted coup in 2016 – and on denying that fundamental rights and freedoms have been progressively limited or that the space for civil society has been alarmingly narrowing over the past four years. This official account of the situation appears in stark contrast to the information and testimonies gathered from civil society actors, who point to a situation where the exercise of the most basic rights, including the right to protest, and civil society's fundamental watchdog role are under serious threat. 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 violated human rights across the board. Indeed, 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, which swept aside, in only a few years, the achievements of nearly four decades of democratization in the country.

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 to encourage a fundamental course correction towards a healthy democracy strongly grounded on the rule of law and fundamental rights, and which acknowledges the important role of civil society. International actors also ought to take the necessary actions and exert pressure, both through diplomacy and by providing adequate support to the Government of Turkey, to rapidly address the deteriorating situation relative to the rule of law, which severely affects fundamental rights and freedoms, and the fundamental work of civil society in Turkey. The Observatory trusts that this Report will help the national authorities and international actors to take further steps to ensure that the rule of law, democracy, and human rights are preserved in Turkey, and to create the conditions for civil society to thrive.

B. Recommendations

B.1. To the Government of Turkey

On the restrictions on freedom of assembly:

- To respect in all circumstances the right to freedom of assembly that is protected by both the Constitution of Turkey and the international instruments ratified by Turkey, including ICCPR and ECHR, and to comply with both the negative and positive obligations of States in this respect;
- To repeal all provisions of emergency decrees integrated into ordinary law, which have an adverse impact on the free exercise of the right to freedom of assembly, in line with the Constitution of Turkey and the international standards binding upon the latter;
- To repeal all provisions in domestic legislation that allow the imposition of blanket bans and other extraordinary restrictions on freedom of assembly by governors in ordinary

times, particularly the amendments to Law no. 5442 introduced by Law no. 7145, which have ensured a de facto extension of the state of emergency;

- To repeal all provisions in domestic legislation, particularly Law no. 2911, that allow the authorities to impose unreasonable restrictions on the location and route of assemblies;
- To repeal all provisions in domestic legislation, particularly Law no. 2911, that authorise the use of force against peaceful protestors, contrary to the international standards that are binding upon Turkey, which require that force only be used as a last resort and in strict respect for the necessity, proportionality, and legality principles;
- To put an end to all arbitrary practices interfering with the essence of, or unreasonably restricting the right to, freedom of assembly, and to interpret the existing legislation in line with the Constitution of Turkey and the international standards that are binding upon Turkey;
- To refrain from stigmatising and marginalising peaceful protestors through negative public discourse, smear campaigns, criminalisation, and judicial and administrative harassment;
- To put an end to the wide-spread impunity of the security forces, by carrying out an effective, transparent, impartial, thorough, and immediate investigation into all credible allegations of excessive use of force, or other abuses, by the security forces, and ensuring that perpetrators are held accountable for their abuses;
- To ensure under all circumstances that those whose right to peaceful assembly has been unduly restricted or violated have access to an effective remedy to challenge the restriction or violation, and that any such remedy is fully in line with the domestic and international fair trial standards that are binding upon Turkey;
- To resume publishing regular annual statistics on the investigations and prosecutions launched against protestors, and to publish all other relevant information which may help civil society to monitor respect for the right to freedom of assembly in Turkey;
- To regularly engage with civil society actors and HRDs to the end of enhancing the respect for the right to freedom of assembly in Turkey, and to ensure the meaningful participation of the latter in relevant decision-making processes;
- To ensure at all times the respect for pluralism and diversity, which are fundamental principles in a democratic society founded on the respect for the rule of law and 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, which is key to a healthy democracy, along with the right to freedom of assembly and association;
- To fully comply with and execute rulings of the European Court of Human Rights as well as the recommendations made during the Universal Periodic Review of the UN Human Rights Council, the periodic review of the Committee against Torture in 2016,³⁰⁰ the periodic review of the Committee on the Elimination of Discrimination against Women in 2016,³⁰¹ and in the report of the Office of the High Commissioner of Human Rights in 2018³⁰² in regard to the freedom of assembly and shrinking civic space in Turkey;
- 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 latter to ensure a thorough investigation into the situation of civil society in Turkey, including the respect for the right to freedom of assembly and association.

On the protection of HRDs and civil society actors:

- To guarantee in all circumstances the physical integrity and psychological well-being of all HRDs and civil society actors peacefully exercising their right to freedom of assembly;
- To put an end to all acts of harassment, including at the judicial level, against all HRDs and civil society actors for the legitimate and peaceful exercise of their right to freedom

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

301 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.

302 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).

of assembly, and ensure in all circumstances that they are able to carry out their activities without hindrance and fear of reprisals;

- To put an end to arbitrary detention, including pre-trial detention, of all HRDs and civil society actors detained for the legitimate exercise of their right to freedom of assembly;
- To refrain from publicly delegitimising or discrediting HRDs and civil society actors, through a hostile rhetoric and 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 HRDs and civil society actors, including those who belong to national, religious, and sexual minorities and other vulnerable groups;
- To ensure an enabling legal, institutional, and administrative environment for civil society and HRDs, which acknowledges the fundamental role they play in protecting democracy, the rule of law, and fundamental rights, and that ensures their protection;
- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, especially its Article 1³⁰³ and Article 12.2³⁰⁴;
- To issue a standing invitation to all relevant United National Special Procedures, including the Special Rapporteur on the Situation of Human Rights Defenders, and to effectively cooperate with the latter to eliminate all restrictions hindering the work of HRDs, which is necessary and indispensable in a democratic society.

B.2. To International Actors

Recommendations to the UN:

To the UN Human Rights Council:

- To put 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 assembly and association on the work of civil society and HRDs, and to issue specific recommendations to Turkey in this regard;
- To monitor the implementation by the authorities in Turkey of the recommendations issued in the context of the last two Universal Periodic Reviews of Turkey³⁰⁵ with regard to freedom of assembly and its impact on civic space.

To the UN Special Procedures, including the UN Special Rapporteurs on the Situation of Human Rights Defenders and on the Rights to Freedom of Peaceful Assembly and of Association:

- To grant particular attention to the situation of civil society and HRDs in Turkey, particularly the challenges faced by the latter in the exercise of freedom of assembly and association, including by regularly monitoring developments relating to the respect for these rights and by reacting to any deterioration 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 monitor the implementation of the recommendations

303 "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels."

304 "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

305 UN Human Rights Council 44th 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>. See in particular recommendations no. 45.18, 45.75, 45.81, 45.104, 45.160, 45.150, 45.154, 45.156, 45.168, 45.172, 45.173, 45.178, 45.183. UN Human Rights Council 29th 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>. See in particular recommendations no. 148.125, 149.35, 149.36, 149.38, 150.23.

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contained therein;

- To include the situation of freedom of assembly and association in Turkey in their annual reports to the UN Human Rights Council;
- If not already granted, to request an invitation, or to follow up on previous requests to carry out a visit to Turkey, and – in case access is granted by the authorities – to conduct a visit to investigate the situation of freedom of assembly and association and its impact on the work of civil society in Turkey, and report back to the UN Human Rights Council based on their findings and conclusions;
- To increase efforts to protect individuals and groups who engage with them and address any act of intimidation and reprisals against those who seek to cooperate, cooperate, or have cooperated with them or any other UN mechanism, as established in the dedicated framework for action adopted in 2015.

To the UN Human Rights Committee:

- To monitor the respect for the right to freedom of assembly in Turkey and the impact that any restrictions or violations is having on civil society and HRDs as part of its periodic review process and to monitor the implementation of recommendations issued in this regard, in between reviews.

Recommendations to the Council of Europe:

To the Parliamentary Assembly:

- To keep the shrinking civic space in Turkey on its agenda and continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of assembly and association in Turkey on the work of civil society and HRDs, and to follow up on its previous resolutions,³⁰⁶ including by issuing new ones focusing on freedom of assembly and association, as well as other fundamental rights, in the post-state of emergency period, and including specific recommendations in this regard;
- To keep assessing progress made towards the respect for democracy, the rule of law and human rights by Turkey, including as part of the follow-up on the recommendations issued by the Parliamentary Assembly in the framework of the 2017 monitoring procedure for Turkey.³⁰⁷

To the Committee of Ministers:

- To keep the shrinking civic space in Turkey on its agenda and continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of assembly and association 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;
- To keep monitoring the execution of relevant ECtHR judgments relating to cases of HRDs, including those regarding violations of the right to freedom of assembly and association.

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306 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).

307 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).

To the Commissioner of Human Rights:

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

Recommendations to the European Union:

To the European Parliament, including the EP Delegation to the EU-Turkey Joint Parliamentary Committee:

- To keep the shrinking civic space in Turkey on its agenda and to continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of assembly and association in Turkey on the work of civil society and HRDs, to follow up on its previous resolutions³⁰⁸ 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 Subcommittee on Human Rights and Committee on Foreign Affairs:

- 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 assembly and association, and to issue further statements and reports on the issue.

To the European Commission and the European External Action Service:

- To regularly monitor respect for the right to freedom of assembly and association and its impact on civil society and HRDs in Turkey, as part of their monitoring conducted under the 2018 Association Agreement 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;
- To raise concerns regarding the shrinking civic space in Turkey, including the restrictions on freedom of assembly and association, in their diplomatic relations with the Government of Turkey, both bilaterally and in multilateral fora, including in the context of High Level Political Dialogues, and based on information provided by civil society actors;
- To maintain the freeze 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 right to freedom of assembly and association and a shrinking civic space;
- 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 HRDs at risk.

³⁰⁸ European Parliament ("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\(RSP\)](#)).

Recommendations to the OSCE:

To the OSCE Parliamentary Assembly:

- To keep the shrinking civic space in Turkey on its agenda and to continue monitoring the situation, with a view to assessing the impact of the restrictions on freedom of assembly and association 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"):

- To monitor the implementation of the OSCE ODIHR guidelines on freedom of assembly and to adopt a report with specific recommendations in this regard;
- To publicly and promptly react to attacks against HRDs and violations of their rights in Turkey, particularly in the context of peaceful demonstrations;
- To request the Expert Panel on Freedom of Assembly and Association to monitor compliance of Turkey, both in law and in practice, with the guidelines, and to issue recommendations to the Government of Turkey in that regard.

To the OSCE Permanent Council:

- To regularly raise cases of violations of the rights of HRDs in Turkey, notably with regard to peaceful demonstrations, and regularly follow-up on actions taken.

To the OSCE Ministerial Council:

- To adopt a decision on the situation of HRDs in the OSCE area, with a focus on the shrinking civic space in Turkey, at the occasion of the next Ministerial Council.



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 and EuroMed Rights since 1997. 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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Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations – the SOS-Torture Network – fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatments or punishments in the world and fighting for the protection of human rights defenders.

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. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of 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

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