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**Submission by the Human Rights Solidarity for the Second
Periodic Report on Türkiye (The 142nd Session of the Human
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Human Rights Solidarity (HRS) is a charity, registered with the Charity Commission for England and Wales, which works on rights and freedoms and is predominantly youth-led. HRS strives to raise awareness and influence political decision-making on human rights violations through public and media outlets.

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I. Freedom of movement (Art. 12)

Information about Amendments made by Emergency Decree to the laws governing the issuance of passports and the denial of passports to public officials who were dismissed in the wake of the attempted coup in 2016, as well as their family members

Legal Framework

1. Article 13 of the UDHR and Article 12 of the ICCPR guarantee every individual's right to freedom of movement and the right to leave any country, including one's own. The Turkish Constitution, particularly Article 23, aligns with these the international standards which stipulate that any restriction on this freedom must be judicially sanctioned.

Situation in Türkiye

2. Following the coup attempt, the Turkish government declared a State of Emergency and enacted thirty-two Emergency Decrees. These Decrees led to the dismissal of hundreds of thousands of public servants and the cancellation of their passports, as well as those of their spouses, thus severely curtailing their freedom of movement.

3. These Emergency Decrees (Arts. 3-5 of Decree-Law no. 667, Decree Law nos. 668,669,670,672, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701) include almost identical provisions which cancel the passports of those who were dismissed from public service:

“... the relevant ministries and institutions shall immediately notify the relevant passport unit. Upon this notification, the relevant passport units shall cancel their passports...”

4. The said Decree Laws also provide for the cancellation of the passports of the spouses of those dismissed:

“The passports held by the spouses of persons, whose names are notified to the relevant passport unit under Paragraph 1, may also be cancelled by the Ministry of the Interior on the same date when this is considered to be detrimental in terms of general safety.” (Article 10 of the Decree Law no. 673)¹

5. The Minister of the Interior announced, in December 2017, that 234,419 passports had been revoked.² 20,000 more public servants were subsequently dismissed and their passports cancelled, together with the passports of their spouses. Those who previously had no passports were subjected to a passport ban. It is estimated that some 500,000 individuals are consequently deprived of their freedom of movement. Although Türkiye's Interior Ministry revoked the

¹ It should be noted that all of the said Decree Laws were approved by the Turkish Parliament and incorporated into the Turkish codex.

² <https://turkishminute.com/2018/07/07/erdogan-says-passport-ban-for-181500-people-to-be-lifted-soon/>



restrictions on 155,350 individuals³ after the State of Emergency was finally lifted, there are presently 125,678 individuals who are still banned from travelling abroad. This is also the case for their spouses and their children who are under 18, as well as the spouses and minor children of those who have been declared to be fugitives. This means that more than 300,000 people are still deprived of the freedom to leave the country as a result of administrative orders.

6. In a nutshell, through Emergency Decree Laws and Law no. 7188, the Turkish government has severely restricted the freedom of movement of hundreds of thousands of Turkish citizens by cancelling their passports or refusing to issue new ones.

Turkish Constitutional Court judgments

7. In three separate judgments, the Turkish Constitutional Court (TCC) annulled the legal provisions that empowered the Government to revoke the passports of individuals without a judicial decision:

- On 24th July 2019, the TCC annulled a Provision which empowered the government to cancel hundreds of thousands of passports during the State of Emergency period 2016-2018.⁴
- On 3/6/2021, the TCC annulled a Provision of Law no: 7188, which amended the Passports Law and empowered the government to cancel passports without a judicial decision.⁵
- On 24/06/2021, the TCC annulled a Provision of Law No. 7086, dated 6/2/2018, (that was approved by Decree-Law No. 686). The annulled provision had allowed the Government to revoke the passports of those dismissed from the civil service with Decree Laws.⁶

8. The above-mentioned judgments show that the TCC has indeed constantly made it clear that the revocation or cancellation of passports may be made only with a judicial decision, a decision by a judge, or by a court.

Disregard for the Turkish Constitutional Court by the Turkish Ministry of the Interior

9. Despite the annulment of these provisions by the Turkish Constitutional Court (TCC), on the grounds that such restrictions require judicial authorisation, the Turkish Ministry of the Interior continued to employ the outdated provisions of the Passport Law to impose travel bans, designating individuals as being security risks without any judicial oversight.

³ <https://www.reuters.com/article/us-turkey-security-passport/turkish-interior-ministry-reinstates-155350-passports-idUSKBN1KF1Q6/>

⁴ TCC, Decision No.:2019/63, 24/07/2019, § 75-77, <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2019/63>

⁵ TCC, Decision No.:2021/36, 03/06/2021, § 40-43, <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/36>

⁶ TCC, Decision No:2021/45, 24/06/2021, § 262-276, <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/45?KararNo=2021%2F45>

10. The Ministry of the Interior started to invoke an archaic provision of the Passport law which was most used during the Military Regime which ruled the country following the military coup of 1980. It was, namely, Article 22 of the Passport Law⁷ and reads:

“Passports or travel documents shall not be issued to those who are prohibited from travelling abroad by the courts, to those whose departure from the country has been determined by the Ministry of the Interior to be risky for general security ...”

11. It has been reported that after the revocation of all the restrictions adopted as per the legal provisions implemented by the TCC, the Turkish Ministry of the Interior imposed further restrictions, which were relevant to approximately 60,000 individuals, and cancelled their passports by designating them a person *“whose departure from the country has been determined to be risky for general security.”*

12. And it is also reported that Türkiye has been registering these passports on Interpol’s SLTD database as being invalid and revoked.

Violations of the Right to Respect for Private Life

13. The mass cancellation of passports without judicial backing constitutes a severe interference with the right to respect for private life. Individuals affected by these measures face substantial disruptions to their personal and family lives, as they are unjustly prevented from reuniting with family members abroad, pursuing professional opportunities, or accessing educational resources. These administrative actions, which lack transparency and legal justification, violate the principles of necessity and proportionality that are fundamental to international human rights law.

⁷ Full text of Article 22 of the Passport Law

Passports or travel documents shall not be issued to those who are prohibited from travelling abroad by the courts, to those whose departure from the country has been determined by the Ministry of the Interior to be risky for general security ... However, in cases of necessity and upon the proposal of the Minister of Interior and the approval of the Prime Minister, passports or travel documents may be issued to persons, save for those who have been prohibited by the courts from travelling to foreign countries.

The clear identities of those concerned (name, surname, place and date of birth, mother’s and father’s name and place of registration) and the reason for the restriction, shall be notified to the local police authorities by the relevant departments.

As soon as the relevant police authorities receive such information, they shall, through the provincial police directorate, communicate it in writing and via the fastest method, in writing, to the security directorates with border crossing gates, to the provincial security directorate where the person is registered and Notifies the General Directorate of Security.

They shall be prevented from travelling abroad and shall not be issued with passports or documents and, if issued, they shall be withdrawn.

The expired passports of those who are prohibited from issuing passports or going abroad by the authorities mentioned in the first paragraph, and those whose stay abroad is determined to be risky for general security, shall not be renewed, and they shall be issued with a travel document for their return to Turkey.

Passports or travel documents may not be issued to those who have lost their passports or travel documents and who cannot justify this, or to those who have been expelled from foreign countries, taking into account the reasons for their expulsion.



Violations of the Principle of Individual Criminal Liability

14. The principle of individual criminal liability is a *jus cogens* norm, recognised universally and enshrined in various international treaties and national constitutions. It mandates that no person should be held to be criminally responsible for the actions of another, ensuring that penalties and legal consequences are personal and not familial. Individual criminal liability is inherent to Article 14 of the ICCPR (which ensures the right to a fair trial and the presumption of innocence) and Article 11(1) of the UDHR, which emphasises that everyone charged with a penal offence has the right to be presumed innocent until proven guilty, thus underscoring the necessity for personal, not collective, accountability.

15. The Turkish Constitution explicitly enshrines this principle in Article 38, which states that criminal responsibility shall be personal. This principle is fundamental to justice, ensuring that individuals are only held liable for their own actions and not punished for the actions of others.

Situation in Türkiye

16. The Turkish government's practice of cancelling the passports, not only of individuals accused of links to terrorist organisations or to activities that are detrimental to national security, but also those of their spouses and children, represents a clear breach of this principle. This collective punishment violates the fundamental precept that legal liability and penalties should be individually assessed and applied.

17. The post-coup Emergency Decrees have led to the cancellation of the passports of the spouses and children of dismissed public servants, without any individual assessment of their actions or any judicial process. This action is contrary to the principles of justice and fairness and constitutes a form of collective punishment, which is prohibited under international human rights law.

18. These actions undermine the principle of individual criminal liability by punishing individuals based on their familial connections rather than on their personal actions, and this is in direct conflict with the guarantees provided under Article 38 of the Turkish Constitution, Article 14 of the ICCPR, and Article 11(1) of the UDHR.

Violations of the Rule of Law

19. The rule of law is a cornerstone of the UDHR and the ICCPR, ensuring that all actions by the State are based on law, are transparent, and uphold human rights. The Turkish Constitution mandates that any restriction on fundamental rights must be judicially sanctioned and based on clear legal grounds.

20. Türkiye's administrative measures to revoke passports and restrict freedom of movement without judicial decisions undermine the rule of law. The annulment of legal provisions by the TCC, which is intended to prevent such arbitrary restrictions, has been



circumvented by the Ministry of the Interior's reliance on archaic laws. This practice not only contravenes the Turkish Constitution but also disregards the principles of legality, accountability and judicial oversight that are essential to the rule of law.

ECtHR judgment; *Telek v. Türkiye*⁸

21. In the case of *Telek v. Türkiye* (66763/17, 66767/17, and 15891/18), the ECtHR found significant violations of Article 8 (the right to respect for private life) and Article 2 of Protocol No. 1 (the right to education) of the European Convention on Human Rights.

22. The applicants, who were academics who had been dismissed from their positions and had their passports cancelled under Emergency Decrees, experienced severe disruptions in their professional and personal lives. Their passports were cancelled for approximately 2 years and 8 months (for two applicants) and 3 years and 10 months for the third applicant, during which they were unable to travel abroad for academic purposes or to continue their studies at foreign universities.

23. The ECtHR determined that the cancellation of the applicants' passports was unlawful and potentially arbitrary, and significantly impacted upon their professional activities and private lives. The Court noted that the applicants were not accused of any involvement in the coup attempt, nor were they linked to any terrorist activities. The legislative measures used to cancel their passports lacked detailed justification and transparency, thus leading to an arbitrary interference with their rights.

24. The Court concluded that the Turkish authorities' actions did not comply with the requirements of lawfulness and proportionality, resulting in violations of the applicants' rights under Article 8 and Article 2 of Protocol No. 1.

Abuse of Interpol channels

25. Since 2016, The Turkish authorities have misused Interpol's Stolen and Lost Travel Document Database by recording the passports of dissidents as being lost, stolen, revoked or invalid, in an attempt to have those people deported to Türkiye when they travel. Abuse of the SLTD system is an even more effective tool of transnational repression than the abuse of the red notice system. Türkiye uses Interpol to evade the human rights protections that are built into extradition systems and repeatedly breaches Interpol's rules by disguising its persecution of dissidents as administrative passport cancellation. The individual targeted would be stopped by a country's border control, having been flagged as using a stolen passport. They would likely be detained while police checks, interviews and searches were conducted and, ultimately, the process of deportation may be initiated.⁹

⁸ <https://hudoc.echr.coe.int/fre?i=002-14031>

⁹ Ali Yildiz and Ben Keith, <https://www.justsecurity.org/87260/after-spotlight-on-red-notices-turkey-is-abusing-another-interpol-mechanism/>



26. The European Parliament study, entitled ‘Misuse of Interpol’s Red Notices and impact on human rights – recent developments’¹⁰; two PACE reports, dated 2019¹¹ and 2023¹²; a joint report entitled ‘They’ve come for you’¹³, and a report entitled ‘Abuse of The Interpol System by Turkey’¹⁴ present Türkiye’s abuse of the Interpol mechanism in detail.

27. According to a submission made to the US Congress by Freedom House, “... The authorities cancelled more than 230,000 passports after the coup attempt in a bid to confine suspected opponents within Türkiye and limit mobility for those already outside the country. The government also reported as lost or stolen an unknown number of passports. The Turkish government has tried to exploit Interpol to target exiles. Following the coup attempt, it allegedly tried to “batch” upload some 60,000 names onto the agency’s notification system.”¹⁵

28. In a recent open letter addressed to the Interpol Secretary General Jürgen Stock, 25 NGOs and human rights lawyers and defenders called on the organisation to take a more robust approach to protecting human rights by addressing the misuse of the SLTD database by the Turkish authorities.

Human Rights Defenders

29. 20 members of the Turkish Parliament from the opposition party, the pro-Kurdish HEDEP, are currently subject to a travel ban. 11 of 20 MP are, meanwhile, subject to a travel ban with a court order, and the remaining 9 are subject to an administrative ban by the Minister of the Interior. Notably, prominent figures such as the HEDEP Co-Chair, Tuncer Bakırhan, the Deputy Speaker of Parliament, Sırrı Süreyya Önder, and a Party Spokesperson, Ayşegül Doğan, are affected.¹⁶

Information about extradition orders for individuals abroad, based on politically motivated charges.

30. Türkiye has sent at least 1,271 extradition requests to 112 countries.¹⁷ Although these requests have been repeatedly dismissed by the judicial authorities and governments of the

¹⁰ <https://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notice.pdf>

¹¹ <https://pace.coe.int/en/files/23524>

¹² <https://pace.coe.int/en/files/32999/html>

¹³ <https://arrestedlawyers.files.wordpress.com/2019/11/04-11-2019-report-extraditions-eng.pdf>

¹⁴ <https://arrestedlawyers.org/wp-content/uploads/2023/06/REPORT-1.pdf>

¹⁵ https://freedomhouse.org/sites/default/files/2021-02/Complete_FH_TransnationalRepressionReport2021_rev020221.pdf

¹⁶ <https://medyascope.tv/2023/11/21/hedepin-20-milletvekili-yurtdisina-cikamiyor-muhatap-kim-sorun-nasil-cozulecek/>

https://kisadalga.net/haber/detay/hedepi-9-milletvekili-yasak-olmamasina-ragmen-yurt-disina-cikamiyor-kurtulmus-ve-yerlikaya-ile-temasa-gecilecek_86496

¹⁷ <https://www.sabah.com.tr/gundem/2023/07/13/adalet-bakani-yilmaz-tunc-acikladi-iste-feto-ile-mucadelenin-bilancosu>



respective countries, according to its official statements Türkiye has forcibly brought back 126 Turkish citizens from 28 countries through extra-judicial renditions or *de facto* expulsions.¹⁸

31. Since 2016, the courts in Greece, Germany, the United Kingdom, Brazil, Romania, Bosnia, Poland, and Montenegro, have refused extradition requests sent by the Turkish authorities, either due to the political nature of the accusations, or to their failure to pass a dual criminality test, or to the risk of being subjected to torture or ill-treatment in Türkiye.¹⁹

32. Moreover, the UN Committee Against Torture decided on three cases that were filed against Morocco: that the possible extradition of three Turkish citizens from Morocco to Türkiye would violate Morocco's obligation under the UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatments or Punishment.²⁰

33. The European Court of Human Rights condemned Azerbaijan²¹ and Moldova²² for carrying out *de facto* expulsions of Turkish citizens to Türkiye, where they were imprisoned on political charges.

34. Likewise, WGAD condemned Malaysia, Cambodia, Kosovo, Pakistan and Azerbaijan for similar conduct in the cases shown in the table below.

Alettin Duman and Tamer Tibik v.
Malaysia and Turkey

[WGAD/2022/8](#)

Osman Karaca vs. Cambodia and Turkey

[WGAD/2020/84](#)

Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan,
Yusuf Karabina, Osman Karakaya and Cihan Özkan v. Turkey and
Kosovo

[WGAD/2020/47](#)

Arif Komiş, Ülkü Komiş and four minors v. Malaysia and Turkey)

[WGAD/2020/51](#)

Mustafa Ceyhan vs. Azerbaijan and Turkey

[WGAD/2019/10](#)

Mesut Kaçmaz, Meral Kaçmaz and two minors v. Pakistan and
Turkey

[WGAD/2018/11](#)

¹⁸ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, AL TUR 5/2020,

¹⁹ A Legal Examination of Recent Extradition Proceedings about Turkish Citizens Abroad, https://www.londonadvocacy.org/wp-content/uploads/2022/09/Extradition-Report_9.9.2022.pdf

²⁰ Mustafa Onder, Ferhat Erdoğan, Elmas Ayden vs Morocco, 845/2017, 846/2017, 827/2017

²¹ Shenturk and others v. Azerbaijan, 41326/17

²² Ozdil and Others v. Moldova, Application no. [42305/18](#)

II. Privacy (Art. 17): Algorithmic persecution through massive privacy violation

The following are excerpts from this report: Algorithmic persecution in Turkey's post-coup crackdown: The FETÖ Meter System, State Watch²³

35. After the coup attempt, during the State of Emergency, the Turkish army, and especially the Turkish naval forces, used an Excel-based algorithm, called the FETÖ-Meter, to identify the officers to be dismissed and subsequently prosecuted.

36. This algorithm, developed by Rear Admiral Cihat Yaycı, was used to profile all active and retired military officers and their relatives. In total, at least 810,000 people were subjected to this profiling algorithm.²⁴

37. The Anatolian News Agency reported that the system started with 29 main criteria, which were expanded to 70 main and 249 sub-criteria. According to a report published by the London-based NGO State Watch, the FETÖ-Meter criteria can be grouped into four categories, namely: (I) those directly related to the core of the profiled person's private life; (II) those related to the profiled person's professional life (from his cadetship); (III) those related to the profiled person's social circle and affiliations; (IV) those related to the profiled person's relatives.

38. In his interviews with the Turkish media, the designer of the algorithm, Yaycı, said that it was "really easy to obtain data - it was enough to send a written request to the relevant institution and then all the data was sent to them". According to a report by the State-run Anatolian news agency, data was obtained from sixteen ministries and twenty-five other public institutions. The data collected included: i) nineteen million lines of banking data, ii) the telephone calls and internet records of around one million GSM numbers, iii) membership records of associations, trade unions, iv) educational records, v) medical records, and so on.

39. The sensitive personal data of at least 810,000 individuals were obtained from various official bodies on the basis of a 'command order' issued by the Commander of the Turkish Naval Forces (TNF). However, the TNF had no authority to obtain and process personal data. For example, Article 20 of the Turkish Constitution (Protection of Private Life) states: "Everyone has the right to request the protection of his or her personal data. This right shall include the right to be informed of, to have access to, and to request the rectification or deletion of personal data concerning him or her, as well as the right to know whether such data is being used in accordance with the purposes for which it was collected. Personal data may only be

²³ Dr Emre Turkut, Ali Yıldız, Algorithmic Persecution in Turkey's Post-Coup Crackdown, <https://www.statewatch.org/media/2943/algorithmic-persecution-in-turkey-fetometer-report.pdf>

²⁴ 'Turkish navy algorithm detects allegedly 4,500 Gülen-linked officers among 800,000 profiled' Turkish Minute, 11 September 2018, <https://www.turkishminute.com/2018/09/11/turkish-navy-algorithm-detects-allegedly-4500-gulen-linked-officers-among-800000-profiled/>

processed in cases provided for by law or with the explicit consent of the data subject. The principles and procedures for the protection of personal data shall be laid down by law".

40. More specific protection is provided for public officials under Article 128(2) of the Turkish Constitution: "The qualifications, appointments, duties and powers, rights and responsibilities, salaries and allowances of civil servants and other public officials and other matters related to their status shall be regulated by law."

41. Article 4 of the Turkish Personal Data Protection Law (TPDPL) stipulates that personal data shall be processed only in accordance with the procedures and principles laid down in this Law or in other laws. Article 6 of the TPDPL further provides that personal data concerning race, ethnic origin, political opinions, philosophical beliefs, religion, religious sect or other beliefs, physical appearance, membership in associations, foundations or trade unions, data concerning health, sexual life, criminal convictions and security measures, as well as biometric and genetic data, are considered special categories of personal data. And it is prohibited to process special categories of personal data (sensitive data) without the explicit consent of the data subject.

42. Those identified by this algorithm were dismissed from their posts by Emergency Decrees, were prosecuted and sentenced for membership of an armed terrorist organisation. In some cases, they were also tortured.

III. Participation in public affairs (Arts. 2, 3, 19, 21, 25 and 26)

Please provide information about the compatibility of the constitutional amendments made in 2016 that stripped Members of Parliament of their immunity, with the provisions of the Covenant.

43. After the coup attempt of July 2016, the Turkish government declared a State of Emergency on July 20, which lasted until July 2018. During the period of emergency rule, on Nov. 4, 2016, 12 pro-Kurdish People's Democracy Party deputies, including its Co-Chairs, were detained.²⁵ This also saw:

- i) pro-Kurdish politicians jailed,
- ii) ninety-four HDP mayors being unseated under Emergency Decree No. 674²⁶, and
- iii) an ongoing State of Emergency rule that severely restricted the freedom of assembly²⁷ and that shut down and dissolved more than 160 critical media outlets.²⁸

44. It was under these conditions that the Constitutional Referendum of 2017, which replaced parliamentary rule with the Executive Presidency, was narrowly accepted.

²⁵ 'Turkey: HDP Deputies Detained Amid Growing Onslaught on Kurdish Opposition Voices' (Amnesty International, 4 November 2016) accessed 8 December 2018

²⁶ 13 Stockholm Centre for Freedom, 'Kurdish political movement under crackdown in Turkey The case of the HDP' (2018)

²⁷ 'The State of Emergency Has Ended but Urgent Measures Are Now Needed to Reverse the Roll Back of Human Rights' (Amnesty International, 18 July 2018)

²⁸ 'World Report 2017: Rights Trends in Turkey', (Human Rights Watch, 2017)

45. Under the same conditions, Recep Tayyip Erdoğan was elected as the Executive President on June 24, 2018, when the Executive Presidency fully entered into force.

Non-compliance with ECtHR ruling (Case of Selahattin Demirtaş)

46. In *Demirtaş v. Turkey*, ECtHR finds/observes that ²⁹ i) members of parliament from the opposition parties, namely, the CHP and the HDP, were the only MPs to be targeted, ii) a number of leading figures and elected mayors from the HDP were also placed in pre-trial detention, iii) decisions on the applicant's initial and continued pre-trial detention are not isolated examples. On the contrary, they seem to follow a certain pattern of silencing dissenting voices.

47. The timing of the applicant's initial and continued pre-trial detention is a further factor to take into account in its examination under Article 18 of the Convention. In this connection, the Court notes that he was deprived of his liberty, in particular, during two crucial campaigns, that of the Referendum of 16 April 2017, and that of the Presidential Election of 24 June 2018.

48. The applicant had expressed his firm opposition to any presidential system that was proposed at the time by President Erdoğan and stated that this was a matter of significant disagreement between the AKP and HDP leaders.

49. The applicant's pre-trial detention undoubtedly prevented him from contributing effectively to the campaign against the introduction of a presidential system in Türkiye.

50. Six candidates stood in the presidential election of 24 June 2018, including the applicant, who was in detention. He therefore had to conduct his election campaign from prison, in a more difficult situation than those of the other candidates.

51. The applicant's political opponents took advantage of the fact that he was deprived of his liberty.

52. The ECtHR eventually found that the detention of Selahattin Demirtaş was politically motivated and that Article 18 ECHR, which required his release, had been violated, yet Türkiye has not complied with the ECtHR ruling.

Non-compliance with the ECtHR ruling (Case of Ferhat Encu and 39 others)

53. In February 2022, the ECtHR ruled that lifting the legislative immunities of 40 MPs from the Peoples' Democratic Party (HDP) violated their freedom of expression.³⁰ The MPs, including former co-leader Selahattin Demirtaş, were arrested on "terrorism-related" charges after their immunity was lifted. The ECtHR ordered Türkiye to pay compensation and stated that the MPs should be released, and their cases retried or dropped. However, Türkiye has not implemented this judgment.³¹

²⁹ *Selahattin Demirtaş v. Turkey* (No. 2), [14305/17](#), §427-431

³⁰ *Encu et al v. Turkey*, [56543/16](#) and 39 others

³¹ <https://bianet.org/haber/ecthr-lifting-immunities-of-demirtas-and-hdp-deputies-violated-freedom-of-expression-257081>



Non-compliance with Constitutional Court (TCC) Rulings (Case of Can Atalay)

54. In the application of the imprisoned lawyer, Can Atalay, of the Gezi trial, the TCC ruled that since he was elected as a Deputy (MP) before the finalisation of his sentence, he should enjoy immunity and therefore be released and the case against him suspended until either his immunity is revoked or his term of office ends.³² However, the Court of Cassation (3rd Criminal Chamber), which is obliged to comply with this ruling, rebelled and refused to do so and went further by filing a criminal complaint against the TCC judges.

55. The TCC issued a second ruling ordering the same articles and added that the lower courts, including the Court of Cassation, have no choice but to comply with its rulings.³³ The Court of Cassation also refused to comply with the 2nd ruling. Then, in January 2024, the parliament, controlled by the ruling AKP, revoked Atalay's Deputy status.

56. On 1st August 2024, it was revealed that the TCC had issued a third verdict in February 2024, declaring the parliament's decision revoking Atalay's MP status null and void and sent the verdict to President Erdoğan's office for publication in the *Official Gazette*, but the presidency waited five months before publication: until August 1, 2024. In the end, three TCC rulings failed to secure the release of the MP and lawyer Can Atalay.

Denial of Electoral Rights to Purged Individuals

57. Individuals purged through Emergency Decrees on an *ad hominem* basis have been denied the right to be elected to local administrative offices, e.g., as mayor and councillors.³⁴ Indeed, Türkiye's High Election Board decided (2019/2363, 10th April 2019) that dismissed public servants could not be elected to offices within local administrations, e.g., as mayor, alderman or mukhtar (local elected administrator for villages).

IV. Freedom of expression, peaceful assembly, and association (Arts. 19, 21, 22)

Whether steps have been taken to decriminalise all offences relating to free expression, including defamation and insulting the President, and to bringing all the parts of the Criminal Code into line with Article 19 of the Covenant

58. In 2021, in the case of Vedat Şorli v. Turkey (Application no. 42048/19), the European Court of Human Rights found that the provision of the Penal Code stipulating the insulting of the President of the Republic was not in conformity with the Convention and should be amended. Despite this ruling, no reform has been made and recent statistics from the Ministry of Justice, in 2023, indicate a significant increase in legal proceedings under this contentious provision. The year 2023 witnessed the filing of 25,520 new cases under Articles 299 and 301

³² Şerafettin Can Atalay (2) [GK], B. No: 2023/53898, 25/10/2023

³³ Şerafettin Can Atalay (3) [GK], B. No: 2023/99744, 21/12/2023

³⁴ No Country for Purge Victims, <https://arrestedlawyers.org/2022/01/18/report-no-country-for-purge-victims/>



of the Turkish Penal Code, which criminalise the insulting of the President and defaming Turkishness, respectively. This marked a record high, demonstrating an escalation in the enforcement of these laws, despite international scrutiny. The reports also highlighted those legal actions extensively involved minors, with 552 juveniles implicated in 673 cases, raising concerns about the application of these laws to individuals under the age of 18. From 2019 to 2023, a total of 68,139 individuals were prosecuted under these legal provisions.³⁵ This trend raises questions about the alignment of domestic laws with international human rights standards, particularly in light of the European Court's findings.

Amendment of Article 220 of the Turkish Penal Code

59. Although, in March 2024, Türkiye amended Article 220 of the Turkish Penal Code, which has been invoked as a subsidiary anti-terror provision through which to convict journalists, human rights defenders and peaceful protesters, the Amendment is not in line with the relevant ECtHR and TCC judgments.

60. The Amendment fails to address the lack of clear criteria with which to define the specific actions that constitute committing a crime on behalf of an organisation, thereby maintaining the existing concerns about arbitrariness and the lack of predictability. Indeed, the amendment to Article 220/6 does not adequately resolve the existing issues of clarity and predictability, failing to ensure the stronger protection of human rights and offering no substantial safeguards against arbitrary enforcement.³⁶

Respond to reports of systematic restrictions on online expression, including the blocking of websites, government requests that social media companies take down content, network shutdowns and social media users facing criminal proceedings for posts

Analysis of Internet Censorship and Freedom in Türkiye

61. According to data provided by the Freedom of Expression Association, as of the end of 2023, a total of 953,415 websites or domain names were blocked in Türkiye. This data indicates a decline in Türkiye's internet freedom, as highlighted by Prof. Dr. Yaman Akdeniz, founder of the Freedom of Expression Association and an expert in internet law, who stated:

- that "with the 240,857 domain names and websites blocked within 2022, a total of 953,415 websites and domain names have been blocked from Turkey by a total of 821,285 different decisions given by 833 different institutions and judges, based on the provisions and authorities detailed in this report."

³⁵ <https://velev.news/gundem/erdogana-hakaret-davalarinda-rekor-25-bin-520-dosya-acildi/>

³⁶ <https://www.amnesty.org.tr/icerik/turkiye-yeni-yargi-paketi-insanlari-hak-ihlalleriyle-karsilasma-riski-altinda-birakiyor>



- that "during the period 2014-2023, a total of 43,769 news URLs were blocked by 7,663 different decisions given by 582 different criminal Judgeships of the Peace, and 38,145 news URLs were detected as having been removed, deleted, or taken down."
- that "Although the Constitutional Court's decisions come very late and delayed, these decisions are completely ignored. In practice, it is even very rare to see references to these decisions. As a result, there is a censorship model that allows complete arbitrariness and that can be used whenever desired."

Article 8 of the Cancelled Law and Its Implications

62. Article 8 of the relevant law provided the President of the Information and Communication Technologies Authority (BTK) with the authority to decide on the removal of content or the blocking of access based on "sufficient suspicion" regarding certain crimes that are specified in the Turkish Penal Code. These crimes include incitement to suicide, the sexual abuse of children, drug provision, the supplying of substances that are dangerous to health, obscenity, prostitution, gambling, illegal betting and crimes against Atatürk.

63. If the administrative decision for content removal and/or access blocking were not executed, the BTK President was authorised to impose fines on the relevant content, hosting, and access providers. If the decision was not executed within 24 hours, the institution could decide to revoke the authorisation of the access provider.

64. The Constitutional Court's annulment decision stated that *"it was evaluated that the decision to remove content, which is a final measure based on the detection of a crime by an administrative authority without a final court decision establishing that the acts, regulated as crimes in criminal laws, were committed, and the imposition of administrative fines in the case that this decision is not executed, violates the presumption of innocence."*³⁷

Freedom House Report and Internet Freedom in Türkiye³⁸

65. According to Freedom House's "Freedom on the Net 2023" report, internet freedom in Türkiye continues to decline. Türkiye was categorised as a "not free" country, with a score of 30 out of 100 regarding freedoms. The report notes that the quality and speed of the internet in Türkiye are generally reliable, but infrastructure failures hinder access in many places. As of early 2023, it was reported that 83.4% of the population in Türkiye used the internet, with internet access in 94.1% of households. The report also highlights that the "ongoing economic crisis and rising inflation" have made internet services unaffordable for many. It notes that internet access is weaker in rural areas, if compared to urban areas, and that there is a slight disparity in internet access between genders, with men having slightly more access than women.

³⁷ <https://www.dw.com/tr/t%C3%BCrkiyenin-sans%C3%BCr-karnesi-953-bin-eri%C5%9Fim-engeli/a-69838899>

³⁸ <https://freedomhouse.org/country/turkey/freedom-net/2023>



Access Restrictions

66. The Freedom House Report also mentioned that the Turkish authorities can occasionally restrict internet access, citing examples such as the November 2022 bombing in Istiklal Street, Istanbul, and the February 6, 2023, Kahramanmaraş Earthquakes.

67. The report also touched upon the activities of the Information and Communication Technologies Authority (BTK), which is responsible for regulating and supervising the telecommunications sector in Türkiye. The report states that this institution has a special budget, its members are appointed by the government, and its decision-making process is not transparent.

Bans on Deutsche Welle and Voice of America

68. The Freedom House Report also referenced the ban on Deutsche Welle (DW) and the Voice of America's (VOA) websites, which was put in place after the Radio and Television Supreme Council (RTÜK), in February 2022, gave international news sites 72 hours to obtain national broadcast licences, a Directive with which DW and VOA refused to comply. In addition to news sites, commercial sites, like Uber, PayPal and Booking.com, as well as the scooter rental application Martı, were also banned. The ban on Martı was based on a complaint from the Istanbul Taxi Drivers' Association.

Information about the closure of media outlets in 2016 and the seizure of their assets, according to Emergency Decrees nos. 667, 668, 676, and the status of the Processes Appeals against these measures

69. By using Emergency Decrees, Türkiye has closed down 2761 legal entities and all their assets have been confiscated.³⁹

70. Of those 149 were media outlets⁴⁰:

- News Agency: 6
- Newspapers and Magazines: 73
- TVs and Radios: 41
- Publication Houses and Distributors: 29

71. Only 72 of 2,761 entities were reopened after Decisions of the State of Emergency Inquiry Commission, however, its activity report does not state an exact number of media outlets that were reopened in this way.⁴¹

³⁹ Olağanüstü Hal İşlemleri İnceleme Komisyonu Faaliyet Raporu: 2017-2022, (State of Emergency Inquiry Commission Activity Report 2017-2022)

https://milletkutuphanesi.gov.tr/GalleryFiles/1812/OHAL_Komisyonu_Faaliyet_Raporu_2017-2022-693c8377-0a9b-49af-bed9-b58e39b2e379.pdf

⁴⁰ Ibid

⁴¹ Ibid

72. The assets of these media outlets were sold by the Saving Deposits Insurance Fund (TMSF), which was tasked to administer and liquidate such assets.⁴² SDIF has been liquidating these assets by selling them. In some cases, these assets are assigned to public institutions. For instance, the headquarters of *Zaman* newspaper, which was seized, and later shut down, by the Turkish government, was assigned to the İstanbul judicial complex to be used as an additional service building.⁴³

73. What is worse is that tens of journalists or press workers have been prosecuted for working for these entities.⁴⁴

Whether the use of force when policing assemblies has consistently adhered to the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination

74. In its Concluding Observations, dated 25 July 2024, on the fifth periodic report on Türkiye, the Committee Against Torture stated⁴⁵ that:

- (i) The Committee is concerned that human rights defenders and journalists in the State party allegedly face threats, physical harassment, arrest, prosecution, torture and ill-treatment, as a result of their legitimate exercise of their rights to freedom of opinion and expression, freedom of peaceful assembly, freedom of association and their right to promote and protect human rights.
- (ii) The Committee is also concerned in regard to allegations of the excessive use of force by law enforcement in policing and dispersing protests and the use of impermissible means of restraint in the context of public assemblies, such as reverse handcuffing, and by the apparent arbitrary application of Law No. 2911 on Public Meetings and Demonstrations to justify arrests which violate the right to freedom of peaceful assembly (Arts. 2, 4, 11-13 and 16).

75. Laws, such as Law No. 7262, impose broad and vague restrictions that exceed international requirements and undermine the principle of legality. These laws are used to target and harass CSOs and human rights defenders, which is not in line with international human rights obligations.

76. Freedom House 2023 and 2024 Reports Find:⁴⁶

⁴² <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.medya>

⁴³ <https://stockholmcf.org/confiscated-zaman-daily-headquarters-now-used-as-court-building/>

⁴⁴ <https://stockholmcf.org/efj-conviction-of-turkeys-zaman-journalists-a-politically-motivated-decision/>
<https://stockholmcf.org/intl-organisations-decry-turkish-courts-verbatim-for-zaman-journalists-calling-them-perversion-of-justice/>
<https://stockholmcf.org/court-hands-down-sentences-to-former-zaman-daily-columnists-in-retrial-over-gulen-links/>
<https://stockholmcf.org/turkey-arrests-former-zaman-daily-executive-on-coup-charges/>

⁴⁵ Concluding observations on the fifth periodic report on Türkiye, 25 July 2024, CAT/C/TUR/CO/5.

⁴⁶ <https://freedomhouse.org/country/turkey/freedom-world/2024>
<https://freedomhouse.org/country/turkey/freedom-world/2023>



- Authorities routinely ban gatherings organised by government critics and frequently use force to break up peaceful protests. Demonstrations, including May Day protests, LGBTQI+ pride parades, and Women's Day marches, often face violent police interventions with tear gas and pepper spray being in common use.
- Weekly vigils organised by the Saturday Mothers, a group protesting about the forced disappearances, are regularly dispersed by police, and participants are arrested. Music festivals and concerts have also been cancelled or banned by provincial governors using various pretexts.
- The right to peaceful assembly remains heavily restricted.
- The cancellation of cultural events and the arrest of protesters are common tactics used to suppress dissent.
- The ongoing harassment of groups like the Saturday Mothers illustrates the government's intolerance of peaceful assembly and protest. Music and cultural events face arbitrary bans, further limiting public expression and assembly.

77. Security forces continue to use excessive force to disperse protests, particularly those that are critical of the government.⁴⁷

Respond to reports that a large number of NGOs, trade unions and judicial associations, were closed down during the extended period of emergency, and provide information about the legal basis for such measures, as well as how due process and independent oversight were ensured

78. By using Emergency Decrees, Türkiye has closed down 2,761 legal entities and all their assets have been confiscated.⁴⁸ 1,470 of those 2,761 legal entities were associations.

79. Only 72 of 2,761 entities were reopened following the decisions of the State of Emergency Inquiry Commission, however, its activity report does not state an exact number of media outlets that were reopened following these decisions.⁴⁹

Other Significant Problems about media freedom, freedom of expression, peaceful assembly

80. Human rights activists and leaders face politically motivated charges. In April 2022, the prominent philanthropist Osman Kavala and seven other civil society leaders were convicted and received long prison sentences on charges of conspiring to overthrow the government. In July 2022, the European Court of Human Rights (ECtHR) ruled that Türkiye had violated its previous ruling calling for Kavala's release.

⁴⁷ <https://www.hrw.org/news/2023/07/27/turkey-istanbul-police-mistreatment-peaceful-protesters>

⁴⁸ Olağanüstü Hal İşlemleri İnceleme Komisyonu Faaliyet Raporu: 2017-2022, (State of Emergency Inquiry Commission Activity Report 2017-2022)

https://milletkutuphanesi.gov.tr/GalleryFiles/1812/OHAL_Komisyonu_Faaliyet_Raporu_2017-2022-693c8377-0a9b-49af-bed9-b58e39b2e379.pdf

⁴⁹ Ibid.

Media freedom

81. RSF reports that with 90% of the national media now under government control, the public has turned, during the past five years, to critical or independent media outlets with different political biases so as to learn about the impact of the economic and political crisis on the country.⁵⁰

82. Freedom House 2023 and 2024 Reports Find:⁵¹:

- The government heavily monitors and censors the Turkish internet, contributing to an atmosphere of self-censorship. The 2022 Disinformation Law introduced a prison sentence of up to three years for promoting false information on social media. The Authorities have arrested journalists and ordinary citizens as a result of their social media posts, particularly those that are critical of the government.
- Academic freedom is severely limited, with thousands of academics dismissed since the 2016 coup attempt. The government and university administrations often prevent research on sensitive topics, thus encouraging self-censorship among scholars.
- Freedom of expression remains under severe threat. The government continues to use the Disinformation Law to prosecute individuals for their online activities. Journalists and citizens who criticise the government are frequently targeted, leading to widespread self-censorship.
- The suppression of academic freedom persists, with ongoing government interference in university affairs and restrictions on research topics. The academic environment is stifled for fear of retribution for expressing dissenting views.
- Most Turkish media networks are owned by businesses with close ties to President Erdoğan and depend on public tenders. Mainstream media often reflect government positions and carry identical headlines. Independent outlets face tremendous political pressure, frequent prosecutions and censorship.
- Türkiye is one of the world's leading jailers of journalists, with many detained on terrorism-related charges. The State broadcasting regulator, RTÜK, frequently fines and censors independent networks that are critical of the government.
- Media freedom continues to be severely restricted. The concentration of media ownership in pro-government hands ensures a biased portrayal of news. Independent journalists and media outlets face constant harassment, legal challenges and censorship.
- Türkiye remains one of the top jailers of journalists globally. RTÜK's aggressive fining and censorship of the independent media stifle any critical voices against the government, thus maintaining a controlled media environment.

⁵⁰ <https://rsf.org/en/country-t%C3%BCrkiye#:~:text=Media%20landscape,political%20crisis%20on%20the%20country>.

⁵¹ <https://freedomhouse.org/country/turkey/freedom-world/2024>
<https://freedomhouse.org/country/turkey/freedom-world/2023>

Disinformation Law

83. On October 13, 2022, Türkiye's parliament passed new amendments, known as the “Disinformation Law”, which introduced new criminal speech offences. These amendments significantly deepen online censorship and restrict access to information, raising concerns about suppressing critical reporting. The law consists of 40 Articles that amend several existing laws, including the Internet Law, the Press Law and the Turkish Penal Code. This law:

- (i) Criminalises the act of spreading false information, with the intent of causing public anxiety or panic. Such offences are punishable by one to three years in prison,
- (ii) Establishes tighter government control over online news websites, giving the government the power to compel social media companies to remove content and hand over user data,
- (iii) Imposes severe penalties on tech companies for non-compliance with content takedown requests and user data handover, including bandwidth reduction up to 90%. The law forces tech companies to become complicit in State censorship or risk their platforms becoming inaccessible in Türkiye,
- (iv) Requires social media platforms to hand over user data upon request, exposing users to the risk of arbitrary arrest and undermining online anonymity,
- (v) Extends regulations to messaging services like WhatsApp and Telegram, requiring them to register and provide user data.

84. Human rights organisations have documented the misuse of the Turkish Penal Code and the Anti-terrorism Law provisions to prosecute and convict journalists and critics without advocating violence. The new law represents a severe threat to the freedom of expression in Türkiye, with provisions that could lead to widespread human rights violations. It is crucial for the Turkish government to ensure the right to free expression and information flow, particularly in the lead-up to the elections, and for tech companies to uphold their commitments to human rights.

85. Freedom House 2023 and 2024 Reports Find⁵²:

- (i) Major social media platforms are required to maintain offices in Türkiye and to comply with government demands to take down content. Authorities have imposed heavy fines and advertising bans on non-compliant companies. The government also restricts access to social media platforms during crises, such as the aftermath of the November 2022 bomb attack in Istanbul.
- (ii) The 2022 Disinformation Law has significantly expanded the scope of the activities on social media that are deemed to be criminal, introducing severe penalties for promoting false information.

⁵² <https://freedomhouse.org/country/turkey/freedom-world/2024>
<https://freedomhouse.org/country/turkey/freedom-world/2023>



- (iii) Internet freedom remains heavily curtailed, with stringent government control and frequent censorship. Social media companies face continuous pressure to comply with government takedown requests, and failure to comply results in substantial fines and restrictions.
- (iv) The Disinformation Law continues to be a tool with which the government can suppress online dissent, with individuals facing criminal charges for their social media posts. The government's ability to block access to platforms during sensitive periods further limits online freedom.
- (v) Discriminatory practices against critical journalists and media outlets, such as stripping them of press passes, are commonplace. Judges who do the government's bidding try to limit democratic debate by censoring online articles tackling corruption and other sensitive topics.

Online and offline expression

86. From April to June 2024, nearly 200 journalists faced relentless judicial pressure, with many being brought to court and subjected to arbitrary prosecutions. In the same period, 12 journalists were detained, and several others were arrested and later released under judicial control, which restricts their freedom of movement and expression.⁵³

Film Censorship, Concert and Festival Bans

87. Nejla Demirci's film "Kanun Hükmü" was banned from being shown at the 19th International Labour Film Festival and at other festivals. The justification given was based on the Meeting and Demonstration Marches Law no. 2911.

88. In 2023, 46 events, mainly involving opposition artists and targeted festivals, were banned by the Ministry of Culture and Tourism.

⁵³ <https://bianet.org/haber/journalists-are-on-the-target-and-have-no-legal-security-anymore-297724>