

Human Rights Committee

Submission for the second periodic report on Turkey

Submission to the 142nd Session of the Human Rights Committee

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LIST OF ISSUES BEFORE SUBMISSION OF

THE SECOND PERIODIC REPORT OF TURKEY

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

STIFTUNG DIALOG UND BILDUNG

BERLIN GERMANY

1. This report has been prepared by Stiftung Dialog und Bildung, a non-governmental organization, as a contribution to the United Nations Human Rights Committee's second periodic review. This review will be conducted during the Committee's 142nd session in Geneva, from October 14 to November 8, 2024, under the International Covenant on Civil and Political Rights framework.
2. Stiftung Dialog und Bildung is a foundation of people who are active in Hizmet (the 'Gülen Movement'). Hizmet's commitment to intercultural dialogue and education has emerged from individual local initiatives and grown in various ways. Against this background, the foundation acts as a point of contact for committed individuals, partners and interested parties, as well as the media and politicians, providing answers to questions regarding Hizmet. At the same time, it initiates new projects and concepts in education and dialogue. Through its scientific work, it also aims to advance research on Hizmet. The foundation also provides impetus for strengthening intercultural dialogue and new educational concepts in Germany geared towards social participation. The aim is to engage in dialogue with representatives from society, politics and business.

Criminalisation of Political Criticism and Freedom of Expression, Freedom of Peaceful Assembly

3. In Turkey, practices contrary to European values and legal standards continue concerning criticism of politicians within the scope of freedom of expression. In 2023, the number of prosecution investigations and criminal files opened in Turkey on the grounds of insulting the President and insulting Turkishness reached record levels. Within the scope of Articles 299 and 301 of the Turkish Penal Code, 25 thousand 520 files were opened in the Public Prosecutor's Offices in 2023 alone. The number of suspects in the files was stated as 18,856. The Ministry of Justice's statistics for 2023 reveal the extent of the investigations opened on the charges of 'insulting the President' and 'insulting Turkishness'. In 2023, 25 thousand 520 files were opened under Articles 299 and 301 of the Turkish Penal Code and 18 thousand 856 people were investigated. With the files transferred from 2022, the total number reached 55 thousand 583. The number of files whose investigations were completed and transferred to criminal courts was 7 thousand 491. 6 thousand 879 people appeared before the judge as defendants in these files. In 2023, one thousand 602 of the defendants were convicted, while one

thousand 982 were decided to ‘defer the announcement of the judgement’. The number of those acquitted was recorded as one thousand 774. Between 2019 and 2023, the number of people prosecuted for insulting the President of the Republic and Turkishness within the scope of TPC 299 and 301 reached 68 thousand 139. There are 673 files on 552 children under the age of 18.¹

4. The Council of Europe, the European Court of Human Rights, and the Venice Commission have repeatedly recommended Turkey's freedom of expression and media freedoms, emphasising the need to take measures to prevent rights violations. However, Turkey persists in its tendency to criminalise political criticism and to penalise criticism of government practices.
5. The section on ‘defamation’ in the Memorandum on Freedom of Expression and Freedom of the Media in Turkey, published on 17 February 2017 following the visit of the Council of Europe Commissioner for Human Rights to Turkey in 2016, reads as follows:²

“54. As regards Article 299 of the Turkish Criminal Code, which provides for a penalty of imprisonment of one to four years, the Commissioner emphasised, following his visit in April, that the application of similar provisions was unprecedented in the other 46 member States of the Council of Europe, including States where insulting the President of the Republic was also considered a separate offence. The use of this provision appears to have become a means of suppressing any criticism of the President and, by implication, of any policy favoured by him, and it is used indiscriminately and unequally against all categories of persons, in particular journalists, cartoonists, lecturers, celebrities, university students and other students, many of whom are minors. In many cases, the acts in dispute involve statements shared through social networks, including reposts or re-tweets.

55. ...the use of this provision is highly incompatible with the European Convention on Human Rights and resembles judicial repression, as the European Court of Human Rights has held that it is incompatible with modern political practice and

¹ <https://velev.news/gundem/erdogana-hakaret-davalarinda-rekor-25-bin-520-dosya-acildi/>

² [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5)

understanding to grant a privilege or special protection to Heads of State by shielding them from any criticism solely because of their office or status.

58. While the recourse to Article 299 and the provisions on defamation, in general, is symptomatic of the growing intolerance of the Turkish authorities and judicial power towards criticism of political officeholders, it is only part of the significant chilling effect caused by judicial repression, which affects all sectors of Turkish society, stifles public debate, reduces the scope for democratic discussion and thereby increases the polarisation of the country.”

6. The Council of Europe Commissioner for Human Rights wrote in March 2024 that there has been no progress in Turkey's freedom of assembly and association. The legislation and its implementation do not align with the Turkish Constitution, European standards, or international conventions Turkey is a party to. There are always bans on peaceful demonstrations, disproportionate violence and attacks by the authorities. According to the Commissioner for Human Rights, protests and demonstrations for human rights, environmental rights and political and socio-economic rights have been banned and dispersed several times by the police. Participants in public events were frequently arrested, including using violence. The legislation on assemblies and demonstrations allows the authorities to ban assemblies and demonstrations based on vague and arbitrary criteria.³
7. The Commissioner observes that the Turkish authorities' negative attitude towards freedom of expression and media freedom and the high level of intolerance towards legitimate criticism of the authorities and elected officials' actions have reached new, worrying levels and continue to manifest themselves through systematic repression and legal proceedings against journalists, civil society organisations, ordinary people and human rights defenders. This process in Turkey has led to a staggering level of self-censorship and a lack of pluralism.

Destruction of Academic Freedoms and Freedom of Expression

8. The aftermath of the 15 July failed coup attempts also had a severe impact on academic freedoms: close to 4,500 academics were dismissed through

³ <https://rm.coe.int/memorandum-on-freedom-of-expression-and-of-the-media-human-rights-defe/1680aebf3d>

appended lists in emergency decrees, without any due process and with no judicial remedy. All deans in Turkey were summarily dismissed, with some subsequently reappointed, and academics were automatically deprived of the right to travel abroad without authorisation. The autonomy of universities was also severely curtailed, abolishing elections within universities and replacing them with direct appointments by the President of the Republic. The Commissioner considers that these developments were a severe blow to another pillar of freedom of expression, namely academic freedom, which, as underlined by the ECtHR⁴³ and the Parliamentary Assembly of the Council of Europe, “should guarantee freedom of expression and action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction⁴.”

9. Another area where freedom of expression deteriorated rapidly in Turkey was because of the authorities’ hardening attitude concerning academic freedoms. The most prominent case in this respect was the very harsh reaction to the signature campaign “Academics for Peace” in January 2016, which gathered 2 212 signatures from academics in Turkey by 20 January 2016 to a text denouncing the government’s actions in the context of curfews and anti-terrorism operations in South-Eastern Turkey and calling for an end to violence there and resumption of negotiations. The Commissioner repeats, as he did after his April visit that he regards this declaration as falling clearly within the boundaries of freedom of expression and the concerns behind it as legitimate and of interest to the public, given the many human rights violations which, according to the Commissioner, were indeed committed during the curfews and anti-terrorism operations⁵.

Government Control of Advertisements and Publicity in the Press and Distribution thereof

10. Another issue brought to the Commissioner’s attention concerns the functioning of the Press Announcement Agency (Basin İlan Kurumu), responsible for placing official advertisements in the press. To keep the print and broadcast media under control, political power has assumed a central role in the

⁴ [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5) (Paragraph 64)

⁵ [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5) (Paragraph 62)

distribution of advertising revenues and monopolised the distribution of advertisements. In this way, favoured media organs are enriched with advertising revenues, while opposition media channels are penalised by depriving them of advertising revenues. In this way, the freedom of expression of the press is controlled, and the broadcasts of opposition channels are penalised by withholding advertising revenues.

11. Available statistics show that this agency heavily favours pro-government newspapers, regardless of circulation numbers, thereby stifling opposition media. The Commissioner notes that a new regulation adopted in October 2016 makes this tendency very clear by stating that an ongoing prosecution against a periodical, notably for terrorism offences, even before a final judgment, will automatically suspend official advertisements to that periodical. If the investigation concerns a journalist, placing advertisements in the periodical where they work is suspended unless the journalist is fired within five working days. Combined with the prevalence of frivolous prosecutions against journalists, the Commissioner considers this a telling example of infringement and lack of state neutrality vis-à-vis the press and pressure to fire critical journalists.⁶

Closure and Confiscation of Assets of Civil Society Organisations, Trade Unions, Associations and Foundations

12. Following the 15 July 2016 military uprising and the deregulation notification filed by the Turkish Government to the European Commission, individuals, as well as civil society organisations, have been severely affected by the state of emergency, and thousands of civil society organisations have been closed with severe interventions for freedom of association. Among the civil society organisations closed down are 28 workers' and civil servants' unions, 104 foundations and 1125 associations. The closure procedures are based on Government Decrees issued during the State of Emergency, particularly Government Decree No. 667. There have been no proceedings for the closure of trade unions or any court decision to close them down.⁷ The assets of all the closed civil society organisations were also confiscated, and their executives

⁶ [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5) Paragraph 32.

⁷ <https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

and members were charged with membership in a terrorist organisation. They have faced prolonged arrest and imprisonment/conviction decisions.

13. Therefore, membership and management of trade unions, associations, and foundations, which were established with legal permission within the framework of the freedoms granted by the constitution, have been criminalised and have started to be applied as a justification for punishment.
14. Among the institutions closed and their assets confiscated were one bank, 35 hospitals, 15 universities, 934 kindergartens, primary schools, high schools, vocational high schools, 109 student dormitories, 694 holdings, companies, and commercial enterprises, and 151 media companies (television, radio, newspaper, printing press, magazine, news agency).
15. Following the 15 July 2016 military uprising and the deregulation notification filed by the Turkish Government to the European Commission, individuals as well as civil society organisations have been severely affected by the state of emergency and thousands of civil society organisations have been closed with serious interventions on freedom of association. Among the civil society organisations closed down are 28 workers' and civil servants' unions, 104 foundations and 1125 associations. The closure procedures are based on Government Decrees issued during the State of Emergency, particularly Government Decree No. 667. There have been no proceedings for the closure of trade unions or any court decision to close them down. The assets of all the closed civil society organisations were also confiscated, and their executives and members were charged with membership of a terrorist organisation. They have faced prolonged arrest and imprisonment/conviction decisions.
16. Therefore, membership and management of trade unions, associations and foundations, which were established with legal permission within the framework of the freedoms granted by the constitution, have been criminalised and started to be applied as a justification for punishment.
17. Among the institutions closed and their assets confiscated; 1 bank, 35 hospitals, 15 universities, 934 kindergartens, primary schools, high schools, vocational high schools, 109 student dormitories, 694 holdings, companies and commercial enterprises, 151 media companies (television, radio, newspaper, printing press, magazine, news agency).

18. On 15 July 2016, 151 media outlets were seized by the Turkish state on the grounds of the coup attempt. Of these organisations, 34 are television stations, 38 radio stations, 73 newspapers, magazines, printing presses, and 6 news agencies. As of 13.01.2022, 37.66 million Turkish Liras (approximately 2 million 100 thousand dollars) of income was obtained from these media companies. The income obtained from these confiscated media companies was transferred to the Turkish State Treasury.⁸
19. According to official Turkish state data, The state has seized 694 companies on the grounds of the coup attempt, and the value of these companies is estimated at 39.5 billion liras (\$11.5 billion). By the end of 2023, the annual turnover of these companies was estimated at 123.3 billion liras (\$4.11 billion). The number of employees still working in the companies seized because they belong to the Gülen movement is 26,914. The total proceeds from selling the companies' assets are reported to be 16.5 billion Turkish liras (550 billion dollars)⁹. These figures include only the assets of the confiscated commercial companies and do not include the assets of universities, schools, foundations and student dormitories.
20. In the intervening period of almost eight years, no judicial proceedings have been initiated against the closed universities, foundations, associations, media organisations and companies, and no judicial proceedings have been initiated against these decrees either, as they were closed directly by emergency government decrees. Since the Turkish Constitutional Court has ruled that it has no jurisdiction to review emergency decrees, these decrees have directly entered into force.
21. Subsequently, applications to the State of Emergency Commission, established on the European Court of Human Rights recommendation, were rejected entirely. The Commission rejected applications concerning closed organisations on various pretexts and procedural grounds. This large-scale expropriation and nationalisation of hundreds of associations, foundations, universities, media organisations and companies have created a culture of impunity, threat, pressure, and fear against other social opposition groups and civil society organisations. The silence of the judiciary against such a large-scale unlawful

⁸ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.medya>

⁹ <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/tmsfye-devredilen-sirketlerden-94unun-mulkiyeti-hazineye-gecti/3274894>

act and the refusal to restore their rights has created excellent intimidation for opposition groups and individuals who are worried that the same fate will befall them.

22. After the assets of business people were seized on the allegation that they were close to the Gülen Movement, these companies were looted by trustees close to the political power appointed to the management of the companies. Most companies were sold and transferred to other business people close to the political power at low prices. In 2021, the Turkish public authorities sold a company with a financial value of 1 billion 700 million Turkish liras for 335 million 500 thousand Turkish liras, one-fifth of its value.¹⁰ This sale was made without any tender to a company that is a close family friend of President Erdogan. Without any tender or competitive environment, a confiscated cargo company was directly transferred to a businessman close to the political power for a fraction of its value, and a massive transfer of resources was achieved¹¹.
23. On 15 July 2016, companies, foundations, schools, universities and all these assets that were confiscated on the grounds of the coup attempt were first transferred to the ownership of the state and then sold, leased or given free use rights to business people close to the political power through government trustees appointed to these companies. For example, almost all the real estates of student dormitories that were confiscated. It was transferred to a foundation founded by the son of President Recep Tayyip Erdogan¹².
24. Immediately after 15 July 2016, thousands of immovable properties, schools, dormitory buildings, etc. belonging to foundations belonging to the Gülen Movement, which were closed down, were transferred to foundations belonging to the son of President Tayyip Erdogan, and in this way, without any court decision or trial, the assets of non-governmental organisations such as foundations, associations, schools, etc. belonging to the Hizmet Movement were plundered free of charge and without compensation.
25. Some other immovables were transferred to a mafia-like structure called 'Ülkü Ocakları', which is the Youth Branch of the ultra-fascist party Nationalist

¹⁰ <https://www.cumhuriyet.com.tr/haber/chpli-kusoglundan-surat-kargonun-satisinda-buyuk-yolsuzluk-iddiasi-ilgili-bakanlari-tmsf-yetkililerini-uyariyorum-1859096>

¹¹ <https://serbestiyet.com/featured/surat-kargo-adina-yakisir-bir-hizla-bilal-erdoganin-arkadasina-satildi-67410/>

¹² https://twitter.com/jpek_hukuk/with_replies

Movement Party (Milliyetçi Hareket Partisi), the junior partner of the Erdogan government¹³. Among these properties, there are even some that are used as party buildings of the political power¹⁴. The building of Zaman Newspaper, which was closed, and its assets confiscated, was demolished by the political power and its printing facilities and printing presses were sold.

26. No trials or closure decisions have been taken by any court against the 28 closed trade unions¹⁵. The assets of all the shutdown civil society organisations have been confiscated and the executives and members of these organisations have been charged with membership of a terrorist organisation and have faced long periods of arrest and imprisonment/conviction. Therefore, the membership and management of trade unions, associations and foundations, which were established with legal permission within the framework of the freedoms granted by the constitution, have been criminalised and started to be applied as a ground for punishment.

27. According to the data of the Ministry of Labour and Social Security, as of 2016, the number of members of the Cihan Sen Confederation, to which civil servants are members, is 22,104 people¹⁶, and all 22,104 members have been dismissed from their public duties and criminal cases have been initiated against them on the grounds that they are members of a terrorist organisation.

28. The number of public employees of the unions affiliated to the Cihan Sen Confederation, which were closed during the state of emergency and to which public employees working in public institutions and organisations were members, has succeeded in making 22.104 members out of a total of 1.756.934 unionised public servants in Turkey. Considering that the total number of

¹³ <https://www.boldmedya.com/2022/12/12/15-temmuz-sonrasi-el-konulmustu-ulku-ocaklari-genel-merkezi-yapildigi-ortaya-cikti/>

¹⁴ <https://www.cumhuriyet.com.tr/haber/fetonun-diye-kapatilan-universiteyi-akpnin-izmir-il-merkezi-yaptilar-697636>

¹⁵ <https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

¹⁶ <https://www.csgb.gov.tr/istatistikler/calisma-hayati-istatistikleri/sendikal-istatistikler/kamu-gorevlileri-sendika-uye-sayilari-hakkinda-tebligler/>

unionised workers in Turkey is 1,514,053 as of 2016, the total number of members of the closed Aksiyon Is Union is 29,568.

29. The total number of unionised employees affiliated to both closed Confederations (civil servants and workers) is 51,672 people, all of whom **have been investigated, detained, arrested, convicted, sentenced to imprisonment and dismissed from public office on charges of terrorist organisation due to their union membership.** The mere fact that these trade union members were members of the above-mentioned trade unions, without being questioned as to what kind of links they had with the military uprising and what kind of threat they posed to the constitutional democratic order, was accepted as sufficient evidence to charge them with membership of a terrorist organisation and to dismiss them from public office. This practice is completely contrary to the Council of Europe's Purification/Lustration Principles 1996/1096¹⁷ and has turned into a disproportionate and disproportionate measure.
30. Not content with the dismissal and termination of employment contracts of union members in public institutions, all work permits of union members were cancelled, their diplomas were annotated, and they were prevented from working elsewhere. Employees who have been dismissed or whose employment contracts have been terminated due to their trade union membership have also been deprived of all pensions, salary, social security, seniority and notice pay rights. Since they are accused of being members of a terrorist organisation, all their financial compensation has been confiscated and they are left without compensation and social insurance.
31. Being a member of one of these 28 unions closed down during the state of emergency, even though no other illegal acts or activities have been detected.
- Being convicted of being a member of a terrorist organisation and sentenced to at least 6 years and 3 months imprisonment in the Heavy Criminal Courts,
 - If employed by a public organisation, subject to purification/Lustration and dismissal from public office,

¹⁷ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16507>

- If he/she works in the private sector, his/her employment contract will be terminated and he/she will not be employed again for life,
- Passport cancellation, travel ban,
- Cancellation of diplomas and licences related to their professions

means that approximately 51,672 people have been subjected to terrorism investigations. In this way, approximately 51,672 people have been subjected to terrorism investigations, unjust detentions, arrests and prison sentences solely on the grounds that they are trade union members.

32. According to Article 11 of the European Convention on Human Rights entitled 'Freedom of assembly and association'

1. Everyone has the right to freedom of peaceful assembly and of association. This right shall include the right to form and join trade unions with others for the protection of his interests.

2. The exercise of these rights shall not be subject to any restrictions other than those prescribed by law and necessary in a democratic society in the interests of national security, public safety, public order, the prevention of crime, health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of legitimate restrictions on the exercise of the rights as mentioned earlier by members of the armed forces, law enforcement agencies or the State administration.

33. According to Article 22 of the United Nations Covenant on Civil and Political Rights, entitled 'Freedom of Association'

1. Everyone has the right to freedom of association with others; this right includes the right to form and join trade unions to protect his interests.

2. No restrictions may be placed on the exercise of this right other than such as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of legal restrictions on the exercise of this right by members of the armed forces and the police.

3. This article shall not authorise States Parties to the International Labour Organization Convention of 1948 'Freedom of Association and Protection of the Right to Organise' to adopt legislative acts inconsistent with the guarantees provided for in that Convention or to apply laws in a manner inconsistent with those guarantees.

34. It must be concretely demonstrated whether the objectives of national security, public safety, public order, public health, public morals, protection of the rights and freedoms of others and prevention of crime, which the European Convention on Human Rights and the United Nations Covenant on Civil and Political Rights recognise as grounds for restriction of the Freedom of Association and the Freedom to Form Trade Unions, have been fulfilled in the case of trade unions closed down during the State of Emergency in Turkey. These measures must be pre-regulated by law and must be necessary in a democratic society and must be proportionate.

35. The trade union activities of the members of the executive and supervisory boards of the closed trade unions and the employees who are members of these unions are considered sufficient evidence for membership of a terrorist organisation and in this way trade union activities are criminalised. An examination of the grounds for conviction by the State of Emergency Commission, the High Criminal Courts and the Court of Appeal shows that the general accusations against trade unions, associations and foundations associated with the Gülen Movement were as follows:

36. These institutions are generally used as a means of recruiting sympathisers. Under the guise of foundation, association and trade union activities, they carry out activities against the state by providing an organisational structure within the armoury recognised by the constitution, abuse and misuse the rights granted by the freedom of association and organise press releases, collective petitions, protests and marches by using the names and labels of these institutions. All these activities are then published in the press and their main purpose is to help create public opinion in favour of the organisation. In these organisations, money is collected under the name of eid al-adha, himmet (donation), dues, which will pave the way for the financing of terrorism and financial aid to the organisation. These non-governmental organisations aim to keep the members of the organisation together under the roof of a corporate identity and a non-

governmental organisation and to keep their morale and motivation strong. To conceal the illegal activities of the organisation, legal-looking events and organisations are organised and the physical facilities of these institutions are used for this purpose. These non-governmental organisations ensure the formation of public opinion and perception in favour of the organisation to spread the organisation's goals and ideology to large segments of the society¹⁸.

37. According to the Turkish State, such civil society activities are considered as auxiliary, support activities or preparatory movements used to achieve the main purpose of the crime, even if they do not have the appearance of violence, attack, fear and panic, and are included in the scope of investigation and punishment. As such, even if they did not participate in any act of terrorism and violence on the night of 15 July, civil society movements, which are considered as support, logistic and preparatory movements, are considered as auxiliary terrorist activities used by the terrorist organisation to achieve the main purpose.
38. In this context, collective organisations among union members, protest actions, union-oriented trips, meetings, union-oriented correspondence and communication activities, meetings to keep the morale and motivation of union members high, efforts to find lawyers for the union and members, efforts to become a member of international trade union organisations, efforts to formulate a strategy for the government's pressures are all accepted as preparatory activities for terrorist acts and therefore as evidence of terrorist organisation membership. Thus, all the executives and members of the 28 trade unions listed above, which were closed during the State of Emergency, were charged with being a member of a terrorist organisation and sentenced to prison terms. For example: Osman Bahce, President of Aktif Egitimciler Sendikasi, was sentenced to 13 years and six months in prison, Hayati Durmus, Vice President of Aktif Egitimciler Sendikasi, Sentenced to 9 Years in Prison, Abdülkadir Isler, Board Member of Aktif Egitimciler Sendikasi; 7 Years 6 Months Prison Sentence, Osman Öztürk, Board Member of Active Educators Union; 7 Years and 6 Months Imprisonment, Mehmet Tezcan, Board Member of Aktif Egitimciler Sendikasi (Active Educators Union) 6 years, ten months and 15 days

¹⁸ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/10286>

in prison, Yusuf Gül, a member of the Executive Board of Aktif Egitimciler Sendikasi, was sentenced to 10 years in prison¹⁹.

39. In addition to these long prison sentences given to union executives, the prison sentences of union members start from 6 years and three months. Even though neither union executives nor members have been found to have any connection with the military uprising of 15 July 2016, merely being a member of one of the 28 unions listed above is considered sufficient evidence to be arrested and convicted for membership or leadership of a terrorist organisation.

Recognition and Criminalisation of the Right to Peaceful Assembly and Coming Together as an Act of Terrorism in Turkey

40. One of the most important fundamental rights and freedoms targeted by the State of Emergency declared after 15 July 2016 in Turkey is the restriction of the right to peaceful assembly and the criminalisation of these rights and freedoms by classifying them as acts of terrorism. Civil society organisations such as trade unions, associations, and foundations are among the civil organisations that have suffered the most during this process. In addition to the institutional bans imposed on these civil organisations, the freedoms of individuals to assemble, demonstrate, gather, strike, and protest have also been criminalised, and individuals exercising these freedoms have been sentenced to long periods of detention, arrest and imprisonment.

41. One of the main traditional features of the Hizmet movement is the so-called 'sohbet-talk organisation' (chat-talk organisation), where volunteers of the movement come together regularly on a certain day of the week to exchange religious, social and cultural ideas, read books together, watch films or sermons with religious or social/cultural content. These meetings are often held indoors, in homes or cultural centres. In context, use the word *sohbet* to mean to converse with one another in a study or discussion circle on the big questions of God, purpose, meaning, faith, religion, and society²⁰.

¹⁹ Ankara 19th High Criminal Court Decision, 2017/87 Esas, 2018/121 Karar numbered Conviction Decision. The Constitutional Court of the Republic of Turkey recognised the detention and arrest of the executives of the above-mentioned trade unions as constitutional and ruled that the complainants' right to liberty and security of person was not violated.

²⁰ <https://sohbetsociety.org/about-us/>

42. The courts in Turkey accept these meetings and gatherings as an important criterion in determining membership of a terrorist organisation. Hundreds of thousands of people are being sentenced for membership in a terrorist organisation because of these peaceful gatherings which do not involve any violence. In none of the trials held so far in relation to these peaceful gatherings has there been any evidence of violence, assault, killing, or wounding. No illegal weapons or materials were found, nor were any illegal weapons or materials found.
43. The 'right to assemble without arms and without attack', which is guaranteed by Articles 34 of the Constitution of the Republic of Turkey, 20 of the Universal Declaration of Human Rights, 21 of the United Nations Covenant on Civil and Political Rights, 11 of the European Convention on Human Rights and 15 of the Convention on the Rights of the Child, and which is accepted as one of the methods of expression within the scope of freedom of expression according to consistent practice, is one of the fundamental values in the development of a democratic society.
44. Article 21 of the United Nations International Covenant on Civil and Political Rights reads as follows the right to peaceful assembly shall be recognised. No restrictions shall be placed on the exercise of this right other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health, morals or the protection of the rights and freedoms of others.
45. According to Article 22 of the Convention, everyone has the right to associate with others to protect his interests, including the right to form or join trade unions.
2. No restrictions may be placed on the exercise of this right other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health, morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of legal restrictions on the exercise of this right by members of the armed forces or of the police organisation.
46. About the right to peaceful assembly, the European Court of Human Rights has emphasised that one of the objectives of the freedoms of assembly and

association enshrined in Article 11 of the Convention is the protection of personal convictions as guaranteed under Article 10²¹.

47. If demonstrators do not engage in violent behaviour, the authorities must tolerate peaceful assemblies in order not to prejudice the essence of the right of assembly guaranteed under Article 11 of the Convention²².

48. Freedom of assembly and the right to express opinions within the scope of this freedom constitute the fundamental values of a democratic society. At the core of democracy is the ability to solve problems through open debate. Except in cases of incitement to violence and rejection of the principles of democracy, radical measures of a preventive nature to abolish freedom of assembly and freedom of expression - where, in the view of the authorities, the expressions and viewpoints used may appear surprising and unacceptable, and the requirements in question may be illegal - undermine democracy and often even jeopardise its very existence. In a democratic society based on the rule of law, political ideas which challenge the established order, and which are advocated to be realised by peaceful means must be given the opportunity to express themselves through other legal means while exercising freedom of assembly²³.

49. The right to peaceful assembly and demonstration can be considered as another aspect of freedom of expression and in this framework, it is a fundamental right in a democratic society. People gather for political, social, cultural and similar reasons and express their views collectively by organising demonstrations, marches and rallies. When placing restrictions on the exercise of the right to assembly and demonstration marches, the second paragraph of Article 11 of the Convention must be interpreted narrowly and considered in conjunction with the case law developed under Article 10 of the Convention. The right to peaceful assembly and demonstration enjoys protection like that afforded to freedom of expression.

²¹ <https://hudoc.echr.coe.int/tur#%7B%22itemid%22:%5B%22001-76098%22%7D>

²² <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114776%22%7D>

²³ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-122059%22%7D>
(paragraph 70)

50. The Turkish state and courts consider the weekly gatherings of Gülen Movement volunteers under the “Sohbet-talk organization” as an element of crime and criminalize them as such:

“The organisation recruits through lighthouses, dormitories, classrooms, schools, meetings and lectures. The primary purpose of these places is to increase the number of followers of this organisation. Their establishment's first and primary purpose is to provide human resources, not education. People are connected to the organisation through solid organisational ties after they are put through the stages of recruitment, apprenticeship, legal duty and illegal assignment. Private schools and dormitories belonging to the organisation are also used for meetings and collecting patronage. To ensure the continuity of the organisational activity and loyalty to the leader, organisational consciousness is given, and the organisational bond is tried to be kept alive and robust through organisational meetings held regularly in predetermined places under the name of chat.²⁴

51. The United Nations Working Group on Arbitrary Detention, in its decision of 21 August 2018, made the first determination that the activities of the Hizmet Movement, such as gatherings for religious purposes and organising conversations, referred to as “chats”, fall within the scope of the freedom of peaceful assembly and association under Articles 21 and 22 of the Covenant on Civil and Political Rights. In other words, even in 2018, an international body has explicitly declared that such non-violent gatherings for purely religious, social and cultural purposes cannot be characterised as a crime. Years later, the decisions of the Grand Chamber and the 2nd Chamber of the ECHR in 2023 reiterated this decision of the United Nations Working Group on Arbitrary Detention and clearly stated that participation in chat organisations does not constitute a criminal offence.

“The Working Group observes that the basis of the allegations against Mr Yayman is his alleged alliance with the Gülen group in 2013, based on his attendance at meetings of the group at that time. The Government has not shown any illegal activity in Mr Yayman's conduct that could be interpreted as support for a criminal organisation. His participation in the meetings organised by the Gülen group in

²⁴ Judgment of the 16th Criminal Chamber of the Court of Appeals No. 2017/3466 E., 2018/767 K.

2013 took place long before it was declared a terrorist organisation. They were organised by the Turkish authorities almost two years later, and the Government have not provided any evidence that Mr. Yayman's participation led to any criminal activity.

About Mr. Yayman's attendance at the Gülen Group meetings in 2013, the Working Group once again observes the failure on behalf of the Government to state that merely attending peaceful and, at the time, legitimate meetings violates this right. The Government's allegations are contrary to the right to freedom of peaceful assembly and of association and are therefore inconsistent with Articles 21 and 22 of the Covenant 25.”

52. Participation in meetings of trade unions, associations, foundations, religious conversations or non-violent protests is considered a criminal offence and grounds for punishment in the decisions of the Turkish High Criminal Courts and the Court of Cassation, which reviews the decisions of these courts as the appellate authority. The following judgments of the Supreme Court show how the acts of gathering and organising meetings and conversations can be used as grounds for punishment:

“As an activity, we were organising activities such as football matches and excursions for the social and cultural activities of the workers. Activities such as religious talks or Risale-i Nur talks were not organised in this association during my term. Because the board of directors determines the seminars and speakers, and we did not have such an activity when I was in the administration, I did not collect aid from anyone as the chairman of the association, and I did not organise religious talks. Religious talks and reading the Quran are not among our activities. In 2006, my friend from the same factory ... invited me to the congregation's chats, saying that he attended them. 3-4 other people I didn't know were attending the chats, and the chats were held at ...'s house. Sometimes, the chats were held at Kızılırmak High School. Here, a teacher whose name I knew as Asim and whose surname I didn't know used to give talks on religious issues²⁵. In 2012 I met this association at the May 1 Workers' Day ceremony. The program was quite lovely. It attracted my attention because we are also MKE workers. Almost all workers and their families

²⁵ Judiciary Criminal General Assembly, decision numbered 2021/57 E., 2021/451 K.

attended. I had been a trade unionist in previous years. There was Digiturk in the association, there was a game broadcast, and there were also daily newspapers. There were conversations and conversations about workers. For example, there were conversations about workers' salaries and union rights. Six or seven months after I became a member, the association announced it would hold an ordinary general assembly. Since I was a former trade unionist, I talked to the association members and became a candidate. As a result of the election, I was elected chairman of the board of directors in December 2012. As written in the board book, we had cultural and social activities. In 2013, we celebrated May 1st Labor Day. Many protocol members, including the governor, the provincial police chief, and the mayor, attended and expressed their appreciation. In our association, family education seminars, pool organisations, excursion programs, and artificial field football games were organised for members and their families, and the provincial directorate approved all these programs of associations. As the board of directors, we once visited the mufti's office and explained our activities. We asked the mufti if they could provide catechism information for our members, and he said that he could come and provide information if his time was available. Several times, the deputy mufti gave information to the current participants at our association centre. Once in 2011 or 2012, with the organisation of... I attended the talks of this organisation only out of religious feelings.²⁶

...., whose testimony was taken by the High Criminal Court, stated that he knew that the defendant stayed in the houses of the organisation, that they served in the same place in Elazığ, that he saw the defendant participating in religious conversations, that Fethullah Gülen's books were read in the conversations, that he did not know the defendant collecting money under the name of himmet (donation)(donation), but that he witnessed him giving money to someone else under the name of himmet (donation)... When evaluated with the other findings in the case file, it is concluded that the plaintiff has an association and connection with FETÖ/PDY²⁷.

Within the scope of the file examined, in the statement of witness ... in his investigation file, "... ... stated in his investigation file that he participated in the

²⁶ Decision of the Criminal General Assembly of the Court of Cassation, 2021/57 E., 2021/451 K.

²⁷ 5th Chamber of the Council of State, decision numbered 2020/6921 E., 2022/6203 K.

chat activities of the structure known as the ... Community, that he did not witness anything other than the defendant making donations under the name of zakat, and that he participated in these chats until the end of 2014 and that the defendant was in this chat group until the end of 2014”, and in his statement taken by the court of first instance; it was concluded that the defendant had an association and connection with FETÖ/PDY²⁸.

He stated that he attended the chats of this structure when he was an assistant at Istanbul ÇAPA, that the chats were usually held at the house of ..., who was an assistant at the Department of Child Psychiatry at that time, that ..., who was from Hakkari, gave around 300 TL of himmet (donation) every month, but that he stopped going to the chats after December 17-25 and that he advised him to stop going to the chats, that ..., who was also an assistant at the Department of Child Psychiatry at that time, who he knew was from Trabzon and who was a doctor at Edirne State Hospital. ..., who was an assistant in the same department, also regularly attended the chats and regularly gave around 300 TL in himmet (donation), and ..., who was an assistant in the same department, also participated periodically in the chats and regularly gave around 300 TL in himmet (donation)²⁹.

He stated that he attended the chat meetings organised by the Fetullah Gülen group in 1999-2000 in..., that the teachers belonging to the organisation came to these chats, that ablution, fasting and catechism information was given in these chats, that 15-25 people attended, that ..., who was a teacher in this group, demanded money from him under the name of zakat, but that he did not give it³⁰.

The statement that the defendant participated in the meetings organized by the organization under the name of chat by taking part in the organization's structure starting from 2012, gave himmet and also organized these chat meetings in his own home”, membership in the Rize Industrialists and Businessmen Association, which was closed by the Decree Law on the grounds that it was affiliated with the FETÖ/PDY armed terrorist organization; In addition,

²⁸ Judiciary Court 3rd Criminal Chamber, decision numbered 2022/22711 E., 2022/5404 K.

²⁹ Judiciary Court 16th Criminal Chamber, Decision No. 2017/1517 E. , 2017/4830 K.

³⁰ Decision of the 16th Criminal Chamber of the Court of Cassation, 2018/2996 E., 2018/4432 K.

considering the fact that the defendant is a member of the Rize Engineers Association, whose connection with the organization is fixed in this context, which is understood from the witness statements that “the building of the association is used for organizational chat meetings and the members attend these organizational meetings”, and that he is a member of the management staff, it should be decided that the defendant should be punished in accordance with Article 314/2 of the Turkish Penal Code, which is fixed with the acceptance that the defendant is included in the hierarchical structure of FETÖ/PDY with organic ties, for the crime of being a member of the terrorist organization. It was not deemed correct to decide for his acquittal in writing with insufficient and unlawful justification. In contrast, it should be decided to punish him by Article 314/2 of the TPC.³¹

In the decision of the court of the first instance, the defendant was convicted of the crime of being a member of an armed organisation by emphasising that the defendant participated in organisational meetings organised by the organisation under the name of chatting and recruiting members to the organisation, strengthen the organisational bond, providing financial support to the organisation, and instilling the ideology of the organisation and that the defendant collected financial aid under the name of himmet (donation) scholarship sacrifice money to the organisation by making organisation propaganda in these meetings.³²

It has been determined that the chats first started with a religious talk, then the teacher made the participants watch Fetullah Gülen tapes. They were told about the activities of the service movement, and immediately afterwards, they were encouraged to give financial support to these activities through donations, met (contributions), scholarships, sacrifices, etc.³³

“..... to ensure the continuity of the organisational activity and loyalty to the leader, organisational consciousness is given, and the organisational bond is

³¹ Decision of the 3rd Criminal Chamber of the Court of Cassation, numbered 2022/7701 E., 2022/3958 K.

³² Decision of the 16th Criminal Chamber of the Court of Cassation No. 2018/1279 E., 2018/2142 K.

³³ Decision of the 16th Criminal Chamber of the Court of Cassation No. 2017/3735 E., 2018/708 K.

tried to be kept alive and strong by organisational meetings held regularly in predetermined places under the name of chat."³⁴

The FETÖ/PDY armed terrorist organisation has a unique system of recruitment, organisation, and communication system to ensure secrecy and a system of activities different from other organisations. In general, recruitment is provided through schools and tutoring centres, organisational consciousness is given through organisational meetings held under the name of chat, organisational bonds are kept alive, and income is provided to the organisation through cash aids called himmet (donation) and other activities and illegal methods.³⁵

The actions of the defendants (in terms of the defendant ...) who participated in organisational meetings under the name of chat, participated in the meeting and demonstration march held in front of the governorship to protest the closure of the organization-affiliated Zaman Newspaper (in terms of the defendant ...) were in a way to show that they were included in the hierarchical structure of the organisation, and in this context, it was decided to decide on their acquittal by making a mistake in the appreciation of the evidence without considering that the defendants should be convicted of the crime of membership of the organisation, which is contrary to the law. The appeals of the public prosecutor of the first instance court were deemed appropriate in this respect, and it was decided to overturn the convictions for this reason.³⁶

Considering the scope of the file of the defendant, who worked for many years in an organisation affiliated with the organisation, whose Bankasya account movements that went beyond the routine were detected upon the instructions of the leader of the organisation, who was a member of the union affiliated with the organisation, who was understood to have given chats to students according to the witness statements, considering the scope of the file, it required a reversal to establish a written verdict as a result of an error in the crime qualification

³⁴ Decision of the 16th Criminal Chamber of the Court of Cassation No. 2017/3735 E., 2018/708 K.

³⁵ Judiciary Court 16th Criminal Chamber, Decision No. 2017/4240 E., 2018/1056 K.

³⁶ Judiciary Court 3rd Criminal Chamber, decision numbered 2022/24991 E., 2022/4237 K.

without thinking that his actions involving continuity, diversity and intensity constituted the crime of being a member of an armed terrorist organisation.³⁷

When the statements of witnesses Ş.U., M.K., K.C. and M.A. are evaluated together, it is determined that the defendant (plaintiff) was involved in the hierarchy of the organisation by establishing organic ties with the organisation, M.K., K.C. and M.A.,when the statements of witnesses Ş.U., M.K., K.C. and M.A. are evaluated together, it is concluded that the plaintiff has an association and connection with the FETÖ/PDY armed terrorist organisation, when evaluated together with the other determinations in the case file.³⁸

According to the witness statements, it has been understood that the defendant is a person who is the elder brother of a chat group in the FETÖ/PDY's Ödemiş district structure and as a requirement of this, he gives chats to the group members and also collects financial aid from the group members under names such as scholarships and sacrifices... ”, when evaluated together with the other findings in the pending case file, it has been concluded that the plaintiff has an association and connection with the FETÖ/PDY armed terrorist organisation.³⁹

When the whole file scope was evaluated together, the defendant took part in the organisational protest meeting held in front of the Isparta Courthouse on 16.12.2014 due to the detention of the executives of the Zaman Newspaper; the defendant had the Zaman Newspaper in the air, the defendant participated in the organisational protest meeting held in front of the Isparta Bank Asya branch on 04.02.2015 due to the transfer of Bank Asya, one of the financial sources of the organisation, to the SDIF. 02.2015 in front of the Isparta Bank Asya branch due to the transfer of Bank Asya, which is one of the financial sources of the organisation, to the SDIF, and the fact that the defendant is a member of the Isparta Industrialists and Businessmen Association, whose activities were terminated and decided to be closed down due to being a member of the organisation, it is understood that his actions contain diversity, continuity and

³⁷ Judiciary Court 3rd Criminal Chamber, decision numbered 2022/18962 E., 2022/5723 K.

³⁸ 5th Chamber of the Council of State, decision numbered 2021/9897 E., 2022/4127 K.

³⁹ 5th Chamber of the Council of State, decision numbered 2021/8477 E.,2022/2746 K.

intensity in a way that shows that he is included in the hierarchical structure of the armed terrorist organisation.⁴⁰

The legal status of the defendant should be assessed and determined according to the video footage of the defendant's participation in the organisational protest meeting held in front of the Bank Asya building on 05/02/2015 due to the transfer of Bank Asya, one of the organisation's financial sources, to the SDIF and the protest action against the detention of Zaman Newspaper writers held in front of the courthouse on 15.12.2014.⁴¹

On 14.12.2014, the defendant participated in the protest demonstration organised on 15.12.2014 to protest the detention of the executives of Zaman Newspaper on 14.12.2014. The defendant's legal status should be appreciated and determined by evaluating the entire file scope.⁴²

It is understood that the defendant worked as the Bolvadin district aid collection officer of the association between 2011 and 2013 in the association Kimse Yok mu, which is affiliated with the FETÖ/PDY organisation, and that he collected aid in return for a receipt, that the defendant participated in the protest action held in front of the courthouse on 15.12.2014 to protest the detention of ... and ..., the executives of the Zaman newspaper. Two thousand fourteen in front of the courthouse to protest the arrest of ... and ..., the defendant was also a member of the Bolvadin Civil Servants and Workers Assistance Association, which was closed due to its affiliation with the FETÖ/PDY organisation, and that he also participated in the protest action in front of the courthouse on 15.12.2014 due to the detention of the executives of the Zaman newspaper.⁴³

53. As can be seen from the above decisions of the Turkish judiciary, non-violent and peaceful acts such as attending religious, cultural or social gatherings such as talks, picnics, conferences, participating in protests, providing scholarships to help poor students, making donations, etc. of associations, trade unions, foundations or other institutions considered to be affiliated with the Gülen

⁴⁰ Judiciary Court 16th Criminal Chamber, decision numbered 2020/3647 E., 2021/1765 K.

⁴¹ Judiciary Court 3rd Criminal Chamber, decision numbered 2021/5804 E., 2021/10416 K.

⁴² Judiciary Court 16th Criminal Chamber, decision numbered 2017/3806 E., 2018/948 K.

⁴³ Judiciary Court 16th Criminal Chamber, Decision No. 2017/3644 E., 2018/821 K.

Movement are considered evidence of membership to a terrorist organisation and are punishable.

Venice Commission Review Report⁴⁴

54. The Venice Commission's Opinion on Monitoring the Implementation of the State of Emergency Measures in Turkey, adopted at its 109th Plenary Meeting on December 12, 2016, The Opinion on Monitoring the Implementation of the State of Emergency Measures on Turkey, adopted by the Venice Commission at its 109th Plenary Meeting on 12 December 2016, made the necessary assessments on the issue of closed trade unions and civil society organisations. According to the Venice Commission:
55. Article 2 of Decree-Law No. 667 stipulates the liquidation of institutions and organisations that are determined to be affiliated or connected to FETÖ PDY, including private health institutions, private educational institutions, private student dormitories, hostels, foundations and associations and their economic enterprises, trade unions, and federations. The decree law also includes a list of legal entities to be liquidated. Under Article 2 (2), all assets of these companies are transferred to the state free of charge.
56. All these measures interfere primarily with many of the rights the European Convention on Human Rights provides, such as the right to freedom of association and property protection. As highlighted above, the Venice Commission considers that a temporary suspension of the activities and conditional freezing of the assets of private institutions allegedly linked to the Gülen movement would be no less effective than a definitive liquidation and confiscation of assets and would be more consistent with the rights and freedoms of individuals.
57. The Venice Commission also underlines that this measure will affect not only the legal entities concerned but also thousands of innocent people who depend on them, including employees, contractors, students and patients. Article 2 (2) of Decree Law No. 667 states that those listed in Article 2 (2) cannot claim any rights or claims from the treasury for any debts. This can mean that the state confiscates the assets of the liquidated institutions but does not recognise their debts. Such a provision could also unfairly penalise other economic players who

⁴⁴ [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)

were not involved in the alleged illegal activities but merely had contract labour or connection to the liquidated companies.

58. The Venice Commission regrets that the closure of private institutions, like the mass dismissals of public officials, has been carried out without individualised decisions based on verifiable evidence and apparently without the fulfilment of legal rules. The State may have broader discretion regarding its apparatus's institutions and public officials' appointment and dismissal. Still, here, the decrees target private institutions independent of the State. It is, therefore, important that safeguards are put in place to protect private institutions against arbitrary liquidation and removal of their assets. Suppose all these measures are not deemed strictly necessary. In that case, the Venice Commission calls on the authorities to suspend such measures or to withdraw or rectify the unjustified measures already taken.

Precedents of the European Court of Human Rights

Yalcinkaya v. Turkey⁴⁵

59. On 26 September 2023, the Grand Chamber of the ECtHR ruled in the Yalçinkaya judgment that membership of non-governmental organisations, unions and associations linked to the Gülen Movement and subject to closure sanctions cannot be a punishment and evidence of membership of a terrorist organisation. In the Yalçinkaya judgment, the ECtHR emphasised that some of the legal acts that are used as a basis for the offence of membership of a terrorist organisation under the Turkish Criminal Code are considered preparatory acts towards achieving the target crime, namely the crime of overthrowing the constitutional order, and are unpredictably expanded. It has been ruled that the acceptance of entirely legal and innocent actions such as membership in associations and trade unions as evidence for membership in a terrorist organisation is a violation of the expansion of criminal law, the principle of no crime and punishment without law and the violation of freedom of association. In this context, no acts of associations, foundations, or trade unions, which were closed in Turkey during the State of Emergency, which can be associated with terrorism and violence such as, for example, conducting

⁴⁵ <https://www.echr.coe.int/w/yalc-nkaya-v-turkiye-no-15669/20->

armed training for their members, possessing weapons, institutionally spreading discourses praising violence and terrorism, organising attack plans, etc., can be cited as examples. The union and association of which the applicant Yüksel Yalçinkaya was a member was referred to as “a union and association operating legally at the time”, and it was ruled that these associations and unions were established and operated by the legal legislation and that these organisations could not be declared terrorist organisations by subsequent laws. According to the Supreme Court, the Turkish state, for the sake of precedent, emphasises that the ECtHR's judgments on the possibility of closing non-governmental organisations relate to the closure of three paramilitary-type far-right extremist associations and have nothing in common with the associations and trade unions in Turkey that were closed in the Yüksel Yalçinkaya case. In the ECHR's jurisprudence, decisions to close associations and trade unions that “support acts of violence, facilitate the killing of a person, resort to violent means, hatred against Muslim immigrants, Jews and homosexuals and incitement to racial discrimination” can never be considered as a precedent for associations and trade unions closed in Turkey and no comparison can be made. This is because the dissolved trade unions in Turkey operated in full compliance with the legal legislation at the time of their establishment and operation. Therefore, the accusation of membership of a terrorist organisation on the grounds of membership of closed trade unions and associations in Turkey violates the “Freedom of Assembly, Association and Trade Union Formation and Membership” guaranteed under Article 11 of the European Convention on Human Rights. (Paragraphs 398-401).

United Nations International Labor Organization (ILO) Committee Report

60. The legal situation of the trade unions closed during the State of Emergency was also examined by the United Nations International Labor Organization Committee reports, and the unlawful actions were demonstrated. The ILO Governing Body, at its 335th Session on March 24, 2021, made the following findings in its examination of the situation of closed trade unions in Turkey within

the framework of the “Freedom of Association and Protection of the Right to Organize Convention No. 87 of 1948”⁴⁶:

61. The political power dissolved the Aksiyon-İş Confederation and its affiliated trade unions through administrative action, and their property was confiscated with the Decree Law No. 667.
62. Many dismissals were carried out based on membership of trade unions dissolved under the decrees issued under the state of emergency, without parliamentary or judicial oversight, without any investigation, and without considering the principle of presumption of innocence and the rights provided by ILO Conventions.
63. The Government argues that the primary justification for the closure was Aksiyon-İş's association with the so-called Fethullahist Terrorist Organization (FETÖ/PDY), which allegedly carried out the coup attempt. The Government argues that these unions acted contrary to national law by acting contrary to the purpose for which they were established and by departing from the principle of serving the economic interests of workers or employers by supporting the coup attempt. It added that the seizure of their assets was not related to the unions' lawful activities but to the alleged economic and actual support for the coup attempt.
64. Under Article 2(1)(d) of Statutory Decree No. 667, published in the Official Gazette on 23 July 2016, trade unions, federations, and confederations with links and affiliations to FETÖ/PDY that were found to pose a threat to national security were closed on 23 July 2016. All movable and immovable property, assets, rights, and receivables of the closed organisations were transferred to the Treasury.
65. The Committee recalls that the closure of a trade union by an executive authority under a decree granting it plenary powers, such as the closure of a trade union by an administrative authority, is a possible violation of Article 4⁴⁷ of Convention No. 87, a fundamental Convention. It, therefore, points to a potential human rights violation. The Committee considers that the administrative dissolution of

⁴⁶ https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS_776590/lang--en/index.htm

⁴⁷ According to Article 4 of Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention) “Organizations of workers and employers shall not be dissolved or suspended by administrative authority”.

trade union organisations is a clear violation of Article 4 of Convention No. 87. The Committee is of the view that closure by the executive branch of government under a law granting plenary powers or the exercise of legislative functions such as dissolution according to administrative powers, does not provide the right of defence that standard judicial procedure alone can guarantee. Noting that, under a statutory provision, the registration of existing trade unions is cancelled, the Committee considers it essential that, under Article 4, the dissolution of workers' or employers' organisations can only be carried out by judicial authorities, which can guarantee the right of defence.

66. According to the Committee, the Turkish Government does not provide any explanation or details on the actions of the trade unions other than a declaration in Decree-Law No. 667 that they are affiliated, linked, or associated with FETÖ/PDY, a declared terrorist organisation.

67. The Committee further noted that, although these unions were legally established and active until the state of emergency, union membership thus dissolved was considered evidence of the individual's ties to FETÖ/PDY, supporting the coup process and legitimising their dissolution. The Committee concluded that these workers were punished for being members of a trade union without any evidence of specific action or participation or even any information that they might have had possible links to a terrorist organisation. In other words, these workers were punished for exercising their right to join organisations of their choosing, guaranteed by Article 2 of Convention No. 87, without the possibility of examining their circumstances.

68. The Committee noted with concern that in cases brought by individuals dismissed for their union membership, the State of Emergency Commission did not question the legitimacy of the closure of the relevant union or the individual's actions. Membership of a closed trade union, evidenced only by information showing that union dues were deducted from an applicant's salary, was considered sufficient grounds for rejecting an appeal against a dismissal decision. The Committee believes that a judicial review of the closure of the relevant trade union organisations should have taken place before or during the review of the lawfulness of the dismissals and that each worker should have had the opportunity to make submissions on their actions and whether they could be linked to illegal activity.

69. The Committee noted with concern that in cases brought by individuals dismissed on the grounds of union membership, the State of Emergency Commission did not question the legitimacy of the closure of the relevant union or the individual's actions. Membership of a closed trade union, evidenced only by information showing that union dues were deducted from an applicant's salary, was considered sufficient grounds to reject an appeal against a dismissal decision. The Committee believes that a judicial review of the closure of the trade union organisations concerned should have taken place before or during the review of the lawfulness of the dismissals and that each worker should have had the opportunity to make submissions on their actions and whether they could be linked to an illegal activity.
70. The Committee notes that the dissolved trade unions alleged that many executive members and chairpersons were imprisoned. The Committee regrets that the Government has not provided any information in this regard and considers that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association under Convention No. 87. The Committee emphasises the importance that must be attached to the individual's right to liberty and security, the right not to be subjected to arbitrary arrest and detention, as well as the right to a fair trial by an independent and impartial tribunal, by the provisions of the Universal Declaration of Human Rights.
71. Suppose the judicial authorities find that the closure was unlawful, that there is insufficient evidence linking them to a terrorist organisation, and that they were involved in a terrorist act. In that case, their property should be returned immediately to enable them to operate immediately.
72. Calls for a full, independent and impartial investigation of all workers subjected to repression and penalties because of their membership of closed trade unions, irrespective of their membership of such unions, to determine whether they have engaged in any illegal activity that would justify their dismissal. Suppose it is found that there is insufficient evidence to justify their dismissal. In that case, these workers should be reinstated, or if it is found that this is not possible due to the time that has elapsed, they should be provided with appropriate compensation for the deprivations they have suffered and a legal remedy, the withdrawal of orders to block them and the return of confiscated passports.

