

PEACE & JUSTICE

Submission to the Human Rights Committee
132nd Session (28 June 2021 – 23 July 2021)
for the adoption of the LOIPR of Turkey

Table of Contents

1. Peace & Justice	2
2. Independence and impartiality of the judiciary (Articles 2, 4, 6, 7, 9, 10, 14, 22)	3
3. Freedom of expression and media (Articles 17, 19, 20)	6
4. Attacks on property rights (Articles 2, 4, 26)	8
5. Equality and discrimination (Articles 2, 3, 6, 7, 20-26).....	11
• Women's rights and withdrawal from the Istanbul Convention	11
• LGBTI Rights.....	12
6. Kurdish conflict and intimidation of opposition (Articles 2, 6, 7, 9, 10, 14, 19, 20, 22, 26).....	13

1. Peace & Justice

Peace & Justice is dedicated to developing high quality research on EU affairs focusing on foreign & security. It was formed in 2017 in response to a widespread view in EU sphere that EU needed a non-partisan think tank providing independent, rigorous source of information and solutions to developments in particular to Turkey.

Since then, as part of still undergoing metamorphosis it was transformed to a think tank covering wider range of countries particularly in EU Neighbourhood policy and Balkans. It aims to make democracy more coherent and effective, thus increasing basic rights. P&J represents human rights organisations in Brussels. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for human rights organisations at the European level.

2. Independence and impartiality of the judiciary (Articles 2, 4, 6, 7, 9, 10, 14, 22)

In 2010 Turkey showed willingness to move towards an independent judicial system with the adoption of major reforms, which adjusted the Turkish constitution with the requirements of the European Convention of Human Rights (ECHR). Nevertheless, these reformative waves lasted until 2013, and the situation aggravated because of the attempted coup d'état of 15 July 2016. The first action after the coup attempt was to arrest two members of the Constitutional Court. The Parliamentary Assembly of the Council of Europe declared on 25 April 2017 that the state of emergency was used as a leverage against not only the people behind the coup, but also the voices that criticized the government.¹ Even when the state of emergency was revoked, the continuation of illegitimate forced transfer and the detention of judges and prosecutors were not hindered.

According to the Turkish Constitution, the judicial independence is protected in the Art.9 and the impartiality of judges is promised in the Art.138, which firmly prohibits the influence of judicial power by authorities, individuals, external and internal actors. In addition, the Art.139 preserves the security of tenure of judges and public prosecutors, which is repeatedly violated the last years. The government followed policies in flagrant breach of the external and internal independence of the judiciary, the impartiality of judges, and the autonomy of the High Judicial Council of Judges and Prosecutors (HSYK), which was dissolved.² In 2014, the control of the government over HSYK increased because of the adoption of the Law No 6524, which was later overturned by the Constitutional Court. The political control of HSYK and the lack of impartiality resulted in the suspension of its observer status at the European Network of Councils for the Judiciary (ENCJ) General Assembly in 2016.³ In addition, the Omnibus Law (Law No 6526) dissolved the special courts and special prosecutors.

The Arrested Lawyers Initiative declared that in 2014 hundreds of judges and prosecutors have been reassigned because their decisions were not aligned with the government. These relocations are not consistent with the principle 52 of Recommendation CM/Rec(2010)12 of the Council of Europe. The Parliamentary Assembly of the Council of Europe approved Resolution 2121 (2016) on the functioning of democratic institutions in Turkey.⁴ In this resolution, the Council of Europe declared its concern over the press freedom, the decline of rule of law and the anti-terrorism security operations, which threatened the democratic system and

¹ Resolution 2156 (2017) of the Council of Europe of 25 April 2017 on the Functioning of Democratic Institutions in Turkey. Retrieved 19 May 2021, from <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23665&lang=en>

² Perilli, L. (February 2021). *Judicial Independence & Access to Justice*. Turkey Tribunal. p. 4. Retrieved 19 May 2021, from https://turkeytribunal.com/wp-content/uploads/2021/03/Report_Luca_Perilli_-Independence_Access_to_Justice_f.pdf

³ ENCJ Votes to suspend the Turkish High Council of Judges and Prosecutors. (2016). Retrieved 19 May 2021, from <https://www.encj.eu/node/449>

⁴ Resolution 2121 (2016) of the Council of Europe of 22 June 2016 on the Functioning of Democratic Institutions in Turkey. Retrieved 19 May 2021, from <https://pace.coe.int/en/files/22957/html>

Turkey's obligations. Human Rights Watch has concluded that, only the first days after the coup attempt, at least 1.684 judges and prosecutors were placed in pre-trial detention.⁵ The cause of their detention was the allegation that they were members of a terrorist group and involved in the coup attempt. Even though the judges can be detained by aggravated penal courts under certain strict circumstances, disregarding the constitutional and statutory guaranties and safeguards granted, many of them were treated as ordinary citizens and lawyers were reluctant to represent them for fear of being punished, especially if there was an allegation of affiliation with PKK or Gülen movement. According to the Arrested Lawyers Initiative, 450 lawyers have been convicted so far to a total 2.786 years in jail, where they face precarious conditions and ill treatment.⁶ In March 2018 OHCHR stated in a report that there is "a pattern of persecution of lawyers representing individuals accused of terrorism offences".⁷

Moreover, the state of emergency impacted the functioning of the Association of Judges and Prosecutors (YARSAV), members of which got arrested, dismissed, and deprived of freedom with insufficient evidence. Turkey entered the league of countries under monitoring status at the Council of Europe on 25 April 2017, because of the human rights violations, lack of democracy and rule of law.⁸ In a referendum held on 17 April 2017 the majority approved constitutional amendments, but the Venice Commission could not guarantee the checks and balances and the US State Department observed a strong influence between the executive and the judicial branch.⁹

Another worth mentioning violation is the Anti-Terror Law, which since 2010 has been enforced to persecute all political opponents, particularly Kurdish. During the state of emergency ordinary law incorporated national security powers with the amendments of the Anti-Terror Law and the Turkish Penal Code. After the coup attempt the target of this enforcement was judges, lawyers, human rights defenders, journalists, and academics. The state of emergency gave an excuse for the government to dissolve more than 1.400 associations from the field of children's rights, women's rights, cultural and victim's rights.¹⁰ Only 358 succeeded to reopen and the Human Rights Association declared that executives of its provincial branches were in prison and, as of June 2019, they have faced more than 5.000 legal cases.¹¹ There is also a pattern of enforced abductions of political opponents, who are illegally transferred and often tortured. The Turkish government refuses to conduct a thorough investigation into these illegal abductions, which deprive the abductees from their fundamental rights, mainly the Art.

⁵ Human Rights Watch. (August 5, 2016). *Turkey: Judges, Prosecutors Unfairly Jailed*. Retrieved 19 May 2021, from <https://www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed>

⁶ Arrested Lawyers. (2016-2021). *Mass Prosecution of Lawyers in Turkey*. p. 8. Retrieved 19 May 2021, from <https://arrestedlawyers.files.wordpress.com/2021/01/report-2016-2021.pdf>

⁷ Office of the High Commissioner for Human Rights. (January-December 2017). *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*. para. 9. Retrieved 19 May 2021, from https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

⁸ Resolution 2156 (2017).

⁹ US Department of State. (2019). *Turkey 2019 Human Rights Report*. Retrieved 19 May 2021, from <https://www.state.gov/wp-content/uploads/2020/03/TURKEY-2019-HUMAN-RIGHTS-REPORT.pdf>

¹⁰ European Commission. (October 6, 2020). (Commission Staff Working Document). *Turkey 2020 Report*. Brussels. Retrieved 19 May 2021, from https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

¹¹ US Department of State (2019).

6 and 9 ICCPR. According to a report published by the Turkey Tribunal, “Turkey has been condemned in 441 cases for a violation of Article 3 ECHR”¹², which corresponds to the Art. 7 and 10 ICCPR and refers to torture and ill treatment practices.

More specifically, the Special Rapporteurs of the OHCHR have declared that the Anti-Terror Law violates the right of the defense and the Art.14 (3)(e) ICCPR, because it does not require the disclosure of the identity of witnesses.¹³ The government took advantage of clauses to impose closed courtrooms for hearings and trials and made such an extensive use of the Anti-Terror Law that, according to Human Rights Watch, one-fifth of the prisoners were charged or convicted of terrorism-related offences.¹⁴ This extensive use raised a concern in the UNWGAD, which published an opinion declaring that the significant increase in the number of cases concerning arbitrary detention under certain circumstances “may constitute crimes against humanity”.¹⁵ The political control over the judiciary is proved by the fact that in high-profile cases the court overlooked the authority of the Constitutional Court.¹⁶ This pattern infringed the Art.153 of the Turkish Constitution, which guarantees that the Constitutional Court prevails over the legislative, the executive and the judicial branches.

Finally in 2018, after seven times of renewal, Turkey lifted off the state of emergency and revoked its derogations to the ECHR and ICCPR. Nonetheless when the European Court of Human Rights (ECtHR)¹⁷ observed a violation of Art. 5 § 1 of the ECHR because of illegal pretrial detention and lack of evidence for a pretrial detention, the Constitutional Court ignored the ECtHR ruling in a decision on 4 June 2020.

All the above prove implicitly that Turkey does not meet the requirements set by the ICCPR, concerning the access to justice, the right of the defense, the fairness of the procedure, the fragmentation, and the dissolution of democratic institutions. Therefore, judicial independence should prevail in order to safeguard the right of fair trial, as stated by the Art. 2 and 14 of the ICCPR.

Suggestion of questions:

- What measures will Turkey take to establish the independence and impartiality of judiciary to ensure the protection of human rights?

¹² Sottas, E. & Vande Lanotte, J. (August 2020). *Torture in Turkey Today*. Turkey Tribunal. p. 23. Retrieved 19 May 2021, from <https://turkeytribunal.com/wp-content/uploads/2020/08/Executive-Summary.pdf>

¹³ Office of the High Commissioner for Human Rights. (August 26, 2020). *Joint Communication from Special Procedures*. (REF: OL TUR 13/2020). Retrieved 19 May 2021, from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25482>

¹⁴ US Department of State (2019).

¹⁵ Human Rights Council. (September 18, 2020). *Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020*. (A/HRC/WGAD/2020/51). para. 102. Retrieved 19 May 2021, from https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_51_Advance_Edited_Version.pdf

¹⁶ Perilli (2021) p. 50.

¹⁷ ECHR. (April 16, 2019). *Alparslan Altan v. Turkey*. (12778/17). Retrieved 19 May 2021, from <http://hudoc.echr.coe.int/eng?i=002-12446>

- How will the government foster and improve the rule of law in order to comply with the international requirements stated by the ICCPR?
- How will the state change the Anti-Terror Law clauses to prevent its extensive use?
- What steps will the government take to guarantee the supreme and impartial authority of the Constitutional Court, as declared by the Art. 153 of the Turkish Constitution?

3. Freedom of expression and media (Articles 17, 19, 20)

Since the 2016 coup attempt the Turkish government has been prosecuting journalists, representing opposition and independent newspapers, and in some cases the prosecution has led to jailing. The repression of opposition voices is hindering the freedom of expression and is clearly infringing the Art. 19 ICCPR. Even though the freedom of expression is protected by the constitution, the penal code prohibits the practices of insulting the state, the president, or government officials. Thus, the press freedom is hindered and according to a July MetroPOLL company survey 62% of respondents believe Turkish media is not free and 50% believe they are not free on social media.¹⁸

“Hate speech” is forbidden by a law safeguarding the minorities rights, which is often used by the government to persecute voices criticizing the state and provides for imprisonment of up to three years. A US Department of State report refers that at the end of May 2020, 6 weeks after the first COVID-19 case, government officials investigated 10.111 social media accounts, nearly 600 individuals, including prominent doctors and heads of medical associations, and arrested more than 500 persons.¹⁹ In 2019, the Ministry of Justice declared that the police conducted 36.066 individual investigations, of which 12.298 were led to trial and 3.831 were penalized for insulting the president and the government.²⁰ The number of imprisoned journalists is at least 37, as estimated by the Committee to Protect Journalists, and reaches up to 79, according to the International Press Institute. The main accusation for punishment is a close liaison with the opposition, such as PKK, which is listed by the US and EU as a terrorist organization. However, Gülen movement is the target of the government with bogus charges in a way contrary to the international law and it is not regarded as a terrorist organization other than Turkey. As of June 2020, the government has closed 119 media outlets after the coup attempt, according to the Vice President Fuat Oktay, while independent reports estimate that this number exceeds 200.

¹⁸ US Department of State. (2020). *Turkey 2020 Human Rights Report*. p. 20. Retrieved 19 May 2021, from <https://www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf>

¹⁹ Ibid. p. 28.

²⁰ Ibid. p. 29.

Those who criticize the government risk investigation, fines, criminal charges, job loss, and imprisonment, especially if they are linked to certain religious, political, or cultural backgrounds. CHP Istanbul provincial chair Canan Kaftancıoğlu was sentenced to nearly 10 years' imprisonment in 2018 for tweets insulting the republic, the president and "spreading terrorist propaganda".²¹

The political control of print media and television stations is widespread, as the majority belongs to government. According to Reporters without Borders, 90% of media is state controlled and only a small fraction is believed to preserve its independence. Almost all Kurdish-language newspapers, television channels, and radio stations are closed due to national security grounds. Cumhuriyet is the leading independent newspaper, and in 2018 fourteen of its members were convicted on terrorism liaison grounds. Regarding to this case, the ECHR blamed Turkey for violation of freedom of expression for eight of the before-mentioned journalists and ordered their compensation. In some cases, also the journalists were sentenced to an international travel ban.²²

State officials have been accused of using methods of intimidating the press, mainly lawsuits, threats, and physical attack. In 2019, according to estimates of the Committee to Protect Journalists, nine journalists experienced physical violence. Saban Onen was attacked in a parking garage in Karacabey by persons affiliated with the AKP mayor, and the same month a vehicle of Nevşehir Journalists Association was set on fire. It is worth mentioning that some publishing houses face a screening for their publications, or they adopt self-censorship practices to avoid bans and fines by the government. Radio and Television Supreme Council (RTÜK) imposes 25 times more in fines to independent broadcasters and in 2020 fifty-four of them were fined or adjourned.

In the Turkey 2020 Report, the European Commission has noticed a backsliding regarding the press freedom and raised its concerns over "the lack of transparency of media funding, concentration of media ownership, political influence on editorial policies, restrictions on freedom of expression and lack of independence of regulatory authorities."²³ Turkish media do not offer an adequate platform for a variety of voices and the government has not made any progress concerning the alignment with the EU acquis in the media sector. Although in 2019 Turkey lifted the ban from Wikipedia, the online contents were still in risk of being deleted and the Regulation on Radio, Television and Voluntary Online Broadcasts requires online broadcasters to be authorized by the RTÜK.

It is noteworthy that in a letter to Turkey in August 2020 UN Special Rapporteurs expressed concerns, as in previous communications, for the abuse of Anti-Terror Law in the context of widespread violation of freedom of expression.²⁴ Their main concern was about the proportionality of the criminalization of speech, as well as the broad language of the anti-terrorism legislation, which does not comply with the international

²¹ Ibid. p.30.

²² Council of Europe. (September 17, 2020). *Odatv Executives and Journalists Detained over an Article*. (27/2020). Retrieved 19 May 2021, from https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&sojdashboard_WAR_coesoportlet_alertId=60511494

²³ European Commission (2020) p. 77.

²⁴ OHCHR (2020).

standards. For example, they referred to vague expressions, such as the prohibition of the insults against the President (art. 299), the Turkish nation (art. 301), or the religious values of a section of the population (art. 216 (3)). People who make “propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations” risk one to five years’ imprisonment, according to article 7, and article 6 prohibits “printing or publishing of declarations or statements of terrorist organizations.” UN Special Rapporteurs urgently recommended Turkish government to revise these legislations and adhere to the country’s international law obligations.

Suggestion of questions:

- What measures will the government take to strengthen the independence of the Radio and Television Supreme Council (RTÜK) to ensure media pluralism?
- How will Turkey amend the Anti-Terror Law, the Criminal Code, the Data Protection Law and the Internet Law?
- What steps will the state take to end the intimidation of media and strengthen the public broadcaster’s independence?
- How will the government ensure that criminal law provisions are not used as a political pressure on critical voices and instead promote a safe and plural environment for the media?
- How will the government ensure that all articles of the Criminal Code are in line with the international standards on the right to freedom of expression?

4. Attacks on property rights (Articles 2, 4, 26)

Turkey’s president, Recep Tayyip Erdoğan, said at a press conference that supporters of the Gülen movement have no right to own property. Erdoğan’s comments came in response to a question by a pro-government journalist who claimed that, following the talk of judicial reform in the country, supporters of the Gülen movement have been talking about the possibility of reacquiring their properties that were confiscated by the government. President Erdoğan has been targeting followers of the Gülen movement, a faith-based group inspired by Turkish cleric Fethullah Gülen, since the corruption investigations of December 17-25, 2013, which implicated then-Prime Minister Erdoğan, his family members and his inner circle. Dismissing the investigations as a Gülenist coup and conspiracy against his government, Erdoğan designated the movement as a terrorist organization and began to target its members. He locked up thousands including many prosecutors, judges and police officers involved in the investigations as well as journalists who reported on them. “They do not have any property rights. They have a large debt to pay to this nation,” Erdoğan said. “So many

people were killed [during the abortive putsch]. What will happen to their property rights?”²⁵

Since 2014, the Turkish Government has been notorious for its disregard to the rule of law and fundamental rights and freedoms. As Human Rights Watch put it, Turkey has experienced a “dramatic erosion of its rule of law and democracy framework” with political influence seeing “courts systematically accepting bogus indictments”.²⁶ The protection of property is included in Article 17 of the Universal Declaration of Human Rights: ‘No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

Article 35 of the Turkish Constitution envisages the right to property. The Article reads as follows: ‘(i) Everyone has the right to own and inherit property. (ii) These rights may be limited by law only in view of public interest. (iii) The exercise of the right to property shall not contravene public interest.’ The Constitution also proscribes the general confiscation punishment (Art.38) ²³ and the confiscation or seizure of ‘printing houses and their annexes, and press equipment’ (Art.30).²⁴ According to the Constitution, where the public interest requires, the expropriation of privately-owned real estate (Art. 46) ²⁵ and the nationalization of private enterprises performing services of a public nature (Art. 47) ²⁶ may be carried out on the condition of paying actual compensation or compensation on the basis of the enterprise’s real value in cash and in advance. Article 683 of the Turkish Civil Code stipulates the content of property rights. According to the Article, the owner of a property is entitled to use, benefit and dispose of such property in whichever way he wishes - albeit within the boundaries of the order of laws.²⁷

After 2015, the Government’s purge against the Gülen Movement saw new types of unlawful and unprecedented discriminatory interventions into the right to property. These are: a) suspending the owner’s property right and overtaking the control of property through appointment of a trustee board; b) closure of legal entities with an Emergency Decree and transferring its assets to the Treasury or to other relevant public entities without any compensation; and c) taking control of a financial institution and having it bankrupted.²⁸

Ten Emergency Decrees closed down 145 foundations, 1,419 associations, 15 foundation owned universities, and 19 trade unions. Moreover, 39 private health

²⁵Erdoğan says Gülen movement supporters have no property rights. (2020). *Stockholm Center for Freedom*. Retrieved 19 May 2021, from <https://stockholmcf.org/erdogan-says-gulen-movement-supporters-have-no-property-rights/>

²⁶ Leighann, S. and Yildiz, A., 2020. *Peace & Justice*. [online] Peacejustice.eu. p. 5. Retrieved 19 May 2021, from <https://peacejustice.eu/wp-content/uploads/EROSION-OF-PROPERTY-RIGHTS-IN-TURKEY-1.pdf>

²⁷ Ibid. p. 7.

²⁸ Ibid. p. 11.

institutions, 2,271 private educational institutions and 151 media outlets, which belonged to private corporations, were closed down. The reasons for these measures were presented as their having affiliation, connection, or relation to, or having belonged to either the Gülen Movement or to other so-called terrorist organizations that were determined by the National Security Council to have carried out activities that were considered to be against the national security. The assets of these dissolved legal persons were transferred to the Treasury, or to other relevant public entities, without cost, compensation or any obligation or restriction.²⁹

The Turkish Government closed down 1,060 schools where 138,000 students were studying. According to tender notices published by the Government, the cost of a 24-classroom school (a standard school) ranges between TL6 and TL9 million (average TL7.5 millions).¹⁰⁰ When the average of TL7.5 million is taken as a base, the total value of the 1,060 schools (with a capacity of some 400,000 students) is about TL7.95 billion. (USD 2,760,000,000, as of 23 July 2016).³⁰

Besides the 2,214 estates which were confiscated and transferred to the General Directorate of Foundations, 4,351 estates were confiscated and transferred to the Treasury.¹¹³ Mr. Naci Agbal, then Minister of Finance, stated that 3,361 of those 4,351 estates were buildings.¹¹⁴ According to the Ministry of Finance's written submission to the Parliament, these 3,361 buildings' gross floor area was 7.2 million m².¹¹⁵ Under the Ministry of Environment and Urban Planning's 2016 circular on construction costs, the minimum cost for the buildings in question (IV. A, B, C of the Circular)¹¹⁶ was TL915 per m². This means that the minimum construction cost for the 3,361 buildings with this floor area would have been TL 6,732,000,000 (USD 2,337,000,000 as of 23 July 2016).³¹

Suggestion of questions:

- What steps will the Turkish government take to prevent and denounce the attacks on property rights?
- How will Turkey ensure that the victims approach all the legal remedies?
- What measures will the Turkish government take to return all the assets and stop the illegal confiscations?
- How will the Turkish government ensure that the legislation of the right to property is adopted and applied?

²⁹ Ibid. p. 16.

³⁰ Ibid. p. 24.

³¹ Ibid. p. 27.

5. Equality and discrimination (Articles 2, 3, 6, 7, 20-26)

- **Women's rights and withdrawal from the Istanbul Convention**

ICCPR declares the equality before the law and prohibits any form of discrimination on grounds “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 26). Nevertheless, discrimination based on gender and sexual orientation remained high last year in Turkey. More specifically 407 femicides were estimated in 2020 and 2.506 complaints of domestic violence were reported only for the period between April 15 and May 2019, when 90.000 convicts were released as part of COVID-19 countermeasures.³² Although the law requires up to ten years’ imprisonment for attempted sexual violation and at least twelve years’ imprisonment for rape or sexual violation, the government did not protect the victims.

Lack of shelters and establishments of violence prevention and monitoring is noteworthy, because some shelters closed during the state of emergency and COVID-19 lockdowns. Since 2018, when the government funded a nationwide domestic violence hotline and web application, Women Emergency Assistance Notification System (KADES), 48.686 incidents were reported. However, NGOs declared that the response was inadequate and sometimes the victims were advised to reconcile with their husbands. For instance, in June 2020 Sevtap Sahin, who had filed 60 domestic violence and restraining order violation complaints, was killed by her husband. Especially during pandemic lockdowns, a rise of domestic violence was observed, and the situation aggravated for women’s rights, because in March 2021 the President, adhering to radical voices of his party, announced Turkey’s withdrawal from the Istanbul Convention, which prevents and combats violence against women and domestic violence.

Women’s rights activists reported the continuation of “honor killings”, which are mostly reported in the southeast. It is noteworthy that in convictions of these killings mitigating factors such as anger or passion caused by the “misbehavior” of the victim are still taken into account.

Regarding sexual harassment, the Ministry of Justice estimated 15.842 cases in 2019. Only in 40 percent of them the perpetrator was convicted, while in the rest of them either the perpetrator was acquitted, or the court was postponed.

Even though the legislation was revised on grounds of gender justice and initiated maternity leave, breastfeeding during work hours, flexibility in work hours and childcare, all the above discouraged employers of hiring women.

³² US Department of State (2020) p. 61.

- **LGBTI Rights**

Discrimination, intimidation, and violent crimes against LGBTI individuals are high in Turkey and unfortunately the victims are not protected by the police and prosecutors. Police often fails to arrest the suspects and in case they get arrested, defendants could use the “unjustifiable provocation” clause of the penal code to receive a reduced sentence. A transgender woman, Ajda Ender, had to flee her apartment because of death threats and physical assaults from her neighbors. Police responded to her with transphobic speech and did not accept her complaint. A LGBTI NGO, called 7 Color Association, estimated that in the southeast Turkey only 30 percent of the 132 hate speech and discriminatory incidents were perpetrated in 2020.³³

Hate speech against LGBTI individuals has risen since the president of the Directorate of Religious Affairs (Diyanet) stated that “Islam cursed homosexuality” as “a great sin” that “causes diseases and decays lineages.” The Ankara Prosecutor’s Office did not accept to conduct an investigation launched by the Ankara Bar Association against the Diyanet and instead initiated an investigation against the bar association for “insulting religious values”.³⁴ Furthermore in June 2020 the director of communications of the Presidency posted a tweet saying “LGBT propaganda poses a great threat to freedom of speech”. The next month a Netflix production was cancelled by the Radio and Television Supreme Council, because of an LGBTI character. The Ministry of Trade Board of Advertisement notified online retailers to label LGBTI pride products with an 18+ warning to protect “children’s mental, moral, psychologic, and social development.”

While the law prohibits hate speech and injurious acts of discrimination, the penal code does not explicitly protect sexual orientation or gender identity. NGOs have reported that LGBTI individuals face discrimination and sometimes are declined to have access to healthcare or are charged with higher rents in housing.

LGBTI community is often banned from organizing pride events and marches for fear of public safety. In 2019 the Constitutional Court found illegal the ban set by Ankara on LGBTI events since 2017. The Turkish government has also banned dating sites, such as Hornet, Gabile.com, and Grindr, and consequently the socialization of LGBTI individuals and the growth of their community has been restricted.³⁵

Suggestion of questions:

- What measures will the Turkish government take to promote and protect women’s rights, as declared by the international law standards?
- How will Turkey ensure the safety of Turkish women, since its withdrawal from the Istanbul Convention?
- What steps will the government take to end the discrimination of LGBTI individuals and ensure a safe environment for the events of their community?

³³ US Department of State (2020) p. 74.

³⁴ US Department of State (2020) p. 75.

³⁵ US Department of State (2020) p. 77.

- How will Turkey revise the penal code to ensure the equal treatment of LGBTI individuals from state officials and society?

6. Kurdish conflict and intimidation of opposition (Articles 2, 6, 7, 9, 10, 14, 19, 20, 22, 26)

Since July 2016, the 96-year old Republic of Turkey, under the rule of its President Recep Tayyip Erdoğan, has gained the fame of a Country where fundamental rights and liberties are trampled: in the last five years, more than 300 journalists, party co-chairs and tens of elected mayors of HDP (the pro-Kurdish People’s Democratic Party), thousands of judges, prosecutors and lawyers, the head of the dissolved association of judges (YARSAV) and President of Progressive Lawyers Association (ÇHD) as well as more than 263,000, including academicians, writers and free minds, have been detained upon the allegation of terrorism-related charges. Not surprisingly, what we see today is a Country that ranks 107th among 128 in rule of law index of 2020, whereas, it was still 59th in 2014, in the aftermath of violent repression of Gezi protests. Although the Turkish Constitution, in its Article 2, describes the Republic of Turkey as “a democratic, secular and social state governed by the rule of law”, Turkish courts have not been capable to effectively protect the fundamental rights of persons, leaving citizens under the arbitrary exercise of power by the Executive.³⁶

Since the Gezi protests and even before, in high profile cases and cases regarding Kurdish defendants, the Human Rights Defenders (HRD) and especially lawyers have been a target of the Government. As highlighted above in chapter 2.2. and 2.3, early 2014 marked the starting of an unprecedented phase for the Government in strengthening its control over the judiciary through arrest, dismissal, and arbitrary transfer of judges and prosecutors. The level and intensity of threats against lawyers and HRD increased parallel to this trend. The abuse of the anti-terror criminal provisions has been the main tool in the hand of State’s judicial authorities for the persecution of political opponents and free minds. The Anti-terror Law is an old problem in Turkey. Since 2010 it has been extensively abused by the State to persecute Kurdish political opponents. However, since July 2016 it is stunning the scale of systematic attacks on lawyers, human rights defenders and free and critical minds, including journalists and academicians. Paragraph 1 of Article 314 of the Turkish Criminal Code criminalizes forming and/or leading an armed terrorist organization; paragraph 2 criminalizes the membership to an armed organization. Under the Criminal Code, the two offences carry a penalty of 7.5 to 22.5 years imprisonment. In a report following her visit to Turkey in July 2019, the Commissioner of Human Rights of Council of Europe, has observed that, only in 2018, “according to official statistics there

³⁶ PERILLI, L. (2021). Turkey Tribunal. Retrieved 19 May 2021, from https://turkeytribunal.com/wp-content/uploads/2021/03/Report_Luca_Perilli_-Independence_Access_to_Justice_f.pdf p. 3.

have been 43,553 convictions to prison sentences under Article 314 of the TCC concerning membership of armed criminal organizations and 2,280 under the Anti-Terrorism Law. The Commissioner also notes that this period was accompanied by the introduction into the Turkish legal order of new, poorly defined concepts such as acting in union or junction with a criminal organization (“iltisak”) or having contacts with such an organization (“irtibat”), which appear to have further blurred the lines between lawful and criminal actions” 127.³⁷

Selahattin Demirtaş, who was the Co-Chair of the pro-Kurdish Party, HDP, was detained on 4th November 2016. On 20th November 2018, the ECtHR decided that Turkey had violated Article 18 of the Convention, in conjunction with Article 5 § 3, and therefore the detention was unlawful. However, Mr. Demirtaş was not released. On 21st September 2019, the Turkish President, Recep Tayyip Erdoğan, said his Government would not allow the release of Selahattin Demirtaş. “This nation does not forget, and will not forget, those who invited people to the streets and then killed 53 of our children in Diyarbakır. We have been following, will follow, this issue, until the end. We cannot release those people. If we release them, our martyrs will hold us accountable” 220 said Erdoğan. On the very same day, Selahattin Demirtaş was detained under a new investigation to prevent his release from the ongoing detention. The ECtHR held a Grand Chamber hearing in September 2020 and issued a final decision on 22 December 2020. The ECtHR Grand Chamber finally ruled that Demirtaş’ four years in prison violated his rights under five different categories, including freedom of expression and right to liberty. In its judgment dated 22 December 2020, the Court observed, in line with the Venice Commission’s findings in its Opinion on Articles 216, 299, 301 and 314 of the Criminal Code²²², that the Code does not define the concepts of “armed organization” and “armed group”. On 23 December 2020 the Minister of Interior, Suleyman Soylu declared: “Demirtaş is a terrorist. The European Court of Human Rights ruling, whatever the reason, is meaningless”. Mr. Demirtaş was not released following the ECtHR Grand Chamber decision. In January 2021 Mr. Selahattin Demirtaş filed another individual application to Turkey’s Constitutional Court, demanding the implementation of the European Court of Human Rights ruling for his immediate release.³⁸

The pervasive culture and overwhelming legacy of impunity for serious human rights violations lasted through the 1980s in the aftermath of the 12 September 1980 military coup and through the 1990s in the context of the Kurdish ‘Troubles’ in the Eastern and Southeastern part of Turkey. Despite some of the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, the Turkish state authorities showed no willingness to react to these grave human rights violations. The entrenched practice of impunity and the allegations of torture and ill-treatment have reached unprecedented levels in more recent years, especially the period that started after the 7 June 2015 parliamentary elections and continued until the aftermath of the 15 July 2016 attempted coup. Despite increasingly persistent allegations, rare formal investigations and

³⁷ Ibid. p. 36.

³⁸ Ibid. p. 53.

prosecutions continue to create a strong perception of impunity for acts of torture and other forms of ill-treatment.³⁹

This pervasive culture of impunity lasted through the late 1980s and 1990s. At that time, Turkish state security forces and the PKK engaged in violent confrontations, at times verging on full-scale warfare. A state of emergency was thus declared where the fighting between Turkish state forces and the PKK was most intense. Regional governors in each emergency province and in the adjacent provinces, with all private and public security forces under their command were responsible for taking any and all necessary measures under the state of emergency regime. These ‘quasi-martial law’ exceptional powers included the authority to impose curfews, to prohibit persons whose activities were deemed detrimental to public order from entering the concerned region, and to evacuate villages. The exercise of arbitrary and sweeping powers by the Turkish state agents resulted in the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, forced evacuation of villages, destruction of homes and similar human rights infringements.⁴⁰

Against this backdrop, the European Court of Human Rights (ECtHR) examined a large number of applications alleging grave human rights violations, including torture, extrajudicial killings and enforced disappearances that arose out of state officials’ activities in the 1990s in Turkey’s Kurdish southeastern region. The Court has repeatedly found Turkey violating the European Convention on Human Rights (ECHR) in over 175 cases concerning the right to life (Art. 2), the freedom from torture, inhuman and degrading treatment or punishment (Art. 3), the right to liberty and security (Art. 5), the right to a fair trial (Art.6), the right to an effective remedy (Art. 13) and the protection of property (Art. 1 of Protocol No.1).⁴¹ The findings of the ECtHR in these cases shed clear light on the prevailing impunity problems in Turkey. In almost all cases before the Court, the Turkish Government completely and repeatedly denied all sorts of atrocities conducted by its agents against the Kurdish population. In turn, the Court has consistently found that the Turkish state authorities failed to conduct a thorough and effective investigation into the incidents (procedural element of Art.2 ECHR) arising from a great many factors, including the reluctance to seek evidence/statements from complainants and witnesses; the failure to collect material evidence from the crime scene; the ban on complainants’ access to the investigation file; the lack of the necessary information in post-mortem examinations (autopsies) required to enable a meaningful conclusion; the laxity in investigation of offenses (mostly on the part of Turkish prosecutors); and finally, the non-prosecution and non-competence verdicts in the absence of evidence. In many other cases, the Court considered that the sufferings of the relatives of forcibly disappeared persons caused by their disappearance constituted a breach of the prohibition of inhuman treatment contrary to Article 3 ECHR.⁴¹

³⁹ HAECK, Y., & TURKUT, E. (2021). Turkish Tribunal. p. 2. Retrieved 19 May 2021, from https://turkeytribunal.com/wp-content/uploads/2020/09/ImpunityinTurkey_Turkey-Tribunal-Report_FINAL.pdf

⁴⁰ Ibid. p. 7.

⁴¹ Ibid. p. 8.

Suggestion of questions:

- How will Turkey protect actively the rights of Kurdish population and prevent the violation of Human Rights?
- What steps will Turkey follow to stop the illegal persecutions and abuses to Kurdish people?
- What steps will Turkey take to secure that the Turkish Supreme Courts operate as independent beacon of freedom and guardians of Human Rights?