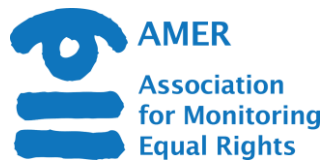


Association for Monitoring
Equal Rights' (AMER) to
contribution to the list of
issues to be addressed before
Turkey's fifth periodic report
to the Committee Against
Torture

11 June 2024



Introduction

This report was prepared by the Association for Monitoring Equal Rights (AMER) to contribute to the list of issues to be addressed before Turkey's fifth periodic report to the Committee Against Torture.

AMER was established in 2010 to monitor and report on human rights. Between 2010 and 2023, AMER submitted communication, opinion or shadow reports to the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD),¹ UN Committee on the Rights of Persons with Disabilities,² UN Universal Periodic Review,³ UN Special Rapporteur on the Right to Education,⁴ UN Special Rapporteur on Minorities,⁵ UN Special Rapporteur on Freedom of Religion and Belief,⁶ UN Special Rapporteur on Freedom of Peaceful Assembly and Association,⁷ The UN Human Rights Council,⁸ UN Committee on the Elimination of All Forms of Discrimination against Women,⁹ GANHRI Subcommittee on Accreditation (SCA),¹⁰ UN Committee on the Rights of the Child,¹¹ UN High Commissioner for Human Rights,¹² Organization for Economic Cooperation and Development (OECD),¹³ UN Special Rapporteur on Contemporary Forms of Racism,¹⁴ European Committee on Social Rights¹⁵ have prepared shadow reports or opinions.

AMER has been monitoring the compliance of the Human Rights and Equality Institution of Turkey (TİHEK) with the Paris Principles and its effectiveness as a human rights mechanism since the institution's establishment in 2016. In 2020, AMER commissioned an evaluation report on the equality institutions in Turkey, namely TİHEK and the Ombudsperson's Institution (KDK).¹⁶ TİHEK also acts as the National Preventive Mechanism (NPM). This report focuses on the TİHEK as an NPM.

¹ CERD 88th Session; Shadow Report.

² Committee on the Rights of Persons with Disabilities 21st Session; Shadow Report on the State Report.

³ Shadow Report for the 3rd Universal Periodic Review of Turkey at the 35th Session (joint submission; Human Rights Joint Platform, Truth, Justice and Memory Centre, AMER); Shadow Report for the 3rd Universal Periodic Review of Turkey at the 35th Session; Shadow Report for the 3rd Universal Periodic Review of Turkey at the 35th Session (joint submission; Front Line Defenders, Netherlands Helsinki Committee, Truth, Justice and Memory Centre, AMER).

⁴ Cultural aspects of right to education; Opinion.

⁵ Categorization of national minorities; Opinion.

⁶ Discrimination against minorities on religion and belief; Opinion.

⁷ Opinion on freedom of peaceful assembly and association of women and girls; Opinion on freedom of peaceful assembly and association in public health emergencies; Opinion on access to justice in the context of freedom of peaceful assembly and association; Opinion on human rights protection in the context of peaceful protests in crisis situations; Opinion on civil society access to resources.

⁸ Opinion on the Human Rights Council resolution 43_L.34 (A/HRC/43/L.34) on the collection of data on the rights of persons with disabilities.

⁹ CEDAW 82nd session; Shadow Report.

¹⁰ TİHEK (Human Rights and Equality Institution of Turkey; HREIT/TİHEK) review at the October 2022 session of the SCA; Shadow Report.

¹¹ Committee of the Rights of the Child 93rd pre-session; Shadow report.

¹² Opinion on 'systemic', 'structural' and 'institutional' racism, prepared for the examination of Turkey at the 54th Session of the UN High Commissioner for Human Rights; Opinion on civic space and the UN human rights system.

¹³ Opinion on the Recommendation on Access to Justice and Human-Centred Justice Systems

¹⁴ Opinion for report A/74/486 on online hate speech.

¹⁵ Shadow report.

¹⁶ https://www.esithaklar.org/wp-content/uploads/2022/05/ESHID-TIHEK-RAPORU-ENG_v2.pdf

Legal Framework

Structure, Duties, Mandate

TIHEK was founded in 2016 by the Law No. 6701. The institution does not have a constitutional basis and the guarantees of being subordinate to the legislative organ. Some rights granted to the President of the Republic of Turkey in the law exhibits that the institution is subordinate to the executive branch. For example, the opening of bureaus under the Institution and the preparation of the working regulations of these bureaus are only possible with the approval of the President.¹⁷ With the approval of the President in March 2023, TIHEK opened an office in Gaziantep province in May 2024.

TIHEK receives a share from the general budget. There is no ratio regarding the budget allocation in the law. The budget amount to be allocated to the Institution from the general budget depends on the discretion of the government in power. This makes the institution financially insecure and threatens its independence. According to TIHEK financial reports, approximately 75% of its budget is spent on staff expenses. The institution is financially audited by the Court of Accounts. In 2023, including 11 board members, the institution employed a total 195 of civil servants and workers.¹⁸ Of these personnel, 27 are employed temporarily and one is employed on a contract basis.

Recommendations made by civil society organizations and international human rights mechanisms on the duties and mandate of the Institution, the criteria for its board's membership and the method of their selection are not taken into account in order to comply with the Paris Principles.

The draft founding law was enacted in April 2016. The duties of the Institution are regulated in Article 9 of the law. The duties of the Institution on the prevention of torture are as follows:¹⁹

- Fighting against torture and ill-treatment and taking actions for this purpose.
- Acting as the National Preventive Mechanism within the framework of the provisions of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Inquiring into, examining, taking a final decision on and monitoring the results of applications filed by persons deprived of their liberty or placed under protection falling into the scope of the National Preventive Mechanism.
- Undertaking regular visits, with or without prior notice, to places where those deprived of their liberties or those under protection are held; delivering the reports related to such visits to relevant agencies and organizations, and disclosing such report to the public when considered necessary by the Board; examining and evaluating the reports regarding visits made to such places by boards/ committees that monitor prisons and detention houses, provincial and sub-provincial human rights boards and other relevant individuals, agencies and organizations.
- Preparing annual reports related to the protection and promotion of human rights, fight against torture and ill-treatment and fight against discrimination which will be submitted to the President of the Republic of Türkiye and Bureau of the Grand National Assembly of Türkiye.

¹⁷ Law on TIHEK no. 6701 Article 14/5 “When deemed necessary and upon a proposal by the Institution, bureaus attached to the Institution may be set up through decision of the President of the Republic of Türkiye.”

<https://tihek.gov.tr/en/pages/Law-on-the-Human-Rights-and-Equality-Institution-of-Turkiye>

¹⁸ <https://www.tihek.gov.tr/public/editor/uploads/YoW91ZFt.pdf> page 31.

¹⁹ <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6701&MevzuatTur=1&MevzuatTertip=5>

- Monitoring the implementation of international human rights conventions to which Türkiye is a party to. Submitting opinions during the process of preparation of the reports which the State is under the obligation to submit to review, monitoring and supervisory mechanisms established by these conventions, by also making use of relevant nongovernmental organizations; and participating in the international meetings where such reports are to be submitted, via sending a delegate.
- Inquiring into, examining, taking a final decision on and monitoring the results of violations of human rights - ex officio.
- Following and assessing development of legislation on issues falling under its mandate and submitting its opinions and proposals thereon to relevant authorities.
- Filing a criminal complaint in cases where the Board finds any violation of human rights or non-discrimination of a criminal nature.
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The duties assigned to TIHEK in the Law are not limited to these. The Institution also has duties as an anti-discrimination and equality institution and as the National Rapporteur on Combating Human Trafficking. It is not possible for the Institution to fulfil all its duties with its current structure, human resources, expertise and financial means.

TIHEK is mainly in line with the Paris Principles in terms of its legal mandate. However, there is no provision in the law that enables the Institution to provide independent reports/opinions to international human rights mechanisms when necessary. The mandate to report to international mechanisms is limited to contributing to the preparation of Turkey's state party reports.

The Decree Law No. 703 issued on July 2, 2018, 15 days before the lifting of the State of Emergency, amended Articles 8, 9, 10, 14, 15 and Provisional Article 1 of the Law No. 6701. Amendments to Articles 8, 9, 14 and 15 are related to the transition to the Presidential Government System. Amendments to Article 10 will be analysed below.

The Constitutional Court's norm review decision on the Decree Law No. 703 was published in the Official Gazette on June 4, 2024. In its decision, the Court annulled the amendments made to the TIHEK law by the Decree Law finding them unconstitutional. The Constitutional Court ruled that some of the annulled provisions would enter into force on the date of publication of its decision, while others would be given 12 months for new legal arrangements.²⁰

Composition of the Board

The Board is the decision-making body of the institution and consists of eleven members, including a Head and a Deputy Head. According to the previous version of the law adopted by the parliament in April 2016, 3 members of the 11 members of the Board elected to serve for a term of four years were appointed by the President of the Republic of Turkey and 8 members were selected by the then Council of Ministers from among the candidates nominated by the Council of Higher Education, non-governmental organisations working in the field of human rights, trade unions, social and professional organisations, academics, lawyers, members of the visual and print media and experts in the field or

²⁰ <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2023/212>

those who applied for membership. The members would then select a Head and Vice-Head from among themselves.

Appointments were made to the Board 11 months after the adoption of the Law with the then Council of Ministers decision dated 16 March 2017 and numbered 2017/9974. The Institution started its activities on this date.

Despite the concerns raised by different International Committees regarding the appointment to the Board in this manner and their recommendations to ensure adequate safeguards for the establishment of an independent Board, articles of the law concerning the composition of the Board and the method of its selection were amended by the Decree Law no. 703, further worsening that current situation.

Executive Decree No. 703 dated 2 July 2018 amended the law to remove the term of office of the members and the authority of the board to elect the Head and the Vice-Head from within the board. The President of the Republic was given the authority to appoint the Head, Vice-Head and the 9 members of the Board. Investigations against the members of the Board are made subject to the permission of the President or to the minister assigned by the President.

With the same Decree Law, the criteria for becoming a member of the Board were completely changed. The requirement of having knowledge and experience in human rights was revoked. With the amendment, it is now sufficient to be a graduate of a higher education institution, have no function and power in the organs of political parties and have the qualifications mentioned in the Civil Servant Law. The President of Turkey, who is authorised to appoint the Head and all members of the Board, is also the chairperson of a political party.

The provision of the law stipulating that the chairperson and members of the board could not be dismissed before the end of their term of office has become dysfunctional as the term of office has become indefinite with the amendment made by the Decree Law. The amendment allows the current board members to serve until they retire, except for resignation and dismissal under certain circumstances. With these amendments, the possibility of forming a board that complies with the pluralism, independence and impartiality criteria of the Paris Principles has been eliminated and TIHEK has been rendered completely incompatible with the Paris Principles.

The term of office of the board appointed in 2017 expired in 2021. On 14 July 2021, new appointments were made to the board with the Presidential Decree No. 2021/349. In this appointment, 5 of the members whose term of office expired were reappointed and 6 members were newly appointed. There are only 2 female members in the Board, one of whom is visually impaired.

In the 2023 elections, two members of the board applied to the AKP for parliamentary candidacy, one member was elected as an MP and left the board, while the other member was not included in the parliamentary lists and still continues to serve on the board. A new member was appointed to replace the member who was elected as an MP.

The majority of the members appointed to the Board in both periods are senior bureaucrats who served in various ministries during the AKP governments. The most recently appointed member is the former Deputy Minister of National Defence. The majority of the members of the Board are not publicly recognised for their work in the field of human rights. The website of the Institution also does not

contain information on the human rights work and experience of the majority of the members currently serving on the Board.²¹

Compliance with the Paris Principles

Since the establishment of TIHEK, Turkey declares before the UN Convention Committees that the institution is in compliance with the Paris Principles. However, when the founding law of TIHEK and its practices, decisions as well as the duties that the institution has refrained from fulfilling since its establishment are examined, it is seen that it is not compatible with the Paris Principles.

The Government announced its Human Rights Action Plan in March 2021. In the Action Plan, “the structure of the Human Rights and Equality Institution of Turkey will be harmonized with the UN Principles on the Status of National Human Rights Institutions and accreditation of the Global Network of Human Rights Institutions will be ensured” is among the targets related to “Increasing the Effectiveness of Human Rights Institutions.”²²

However, no improvements were made to its founding law within the framework of the announced action plan. Nevertheless, 6 years after its establishment, TIHEK applied for accreditation to the Accreditation Sub-Committee of the Global Alliance of National Human Rights Institutions (GANHRI) on 1 June 2022. The Committee accepted TIHEK as a Class B national institution in October 2022.²³

Assessment in terms of Legal Duties

General Duties

- Although TIHEK is tasked with monitoring the implementation of human rights conventions to which Turkey is a party, to date it has not monitored the implementation of any convention, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The National Preventive Mechanism Report published by the Institution is only a visit report. TIHEK has prepared reports for the years 2018, 2019, 2020 and 2021. However, there are no reports for 2022 and 2023.
- TIHEK held high level meetings with groups working against the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), from which Turkey withdrew in March 2021, and included in its reports statements that the Convention caused discomfort in society. Moreover, it did not make any recommendation to the Presidency of the Republic of Turkey not to withdraw from the Convention.

²¹ <https://www.tihek.gov.tr/kategori/pages/Saffet-BALIN>
<https://www.tihek.gov.tr/kategori/pages/2baskan>
<https://www.tihek.gov.tr/kategori/pages/yunus-emre-karaosmanoglu>
<https://www.tihek.gov.tr/kategori/pages/ismail-AYAZ>
<https://www.tihek.gov.tr/kategori/pages/Av-Zennure-BER>

²² <https://insanhaklarieylemplani.adalet.gov.tr/resimler/eylemplani.pdf>

²³ <https://www.tihek.gov.tr/kategori/pages/BM-ve-Ulusal-insan-Haklari-Kurumlari>

- The Institution does not fulfil its duty to monitor the legislative activities related to its statutory duties and make recommendations to the relevant authorities. The Institution has not made any proposals to the parliament or the government on legislative work.

Application or *Ex officio* Examination Mandate

TIHEK is authorized to investigate allegations of torture and ill-treatment upon the application of persons deprived of their liberty. It is also mandated to investigate human rights violations *ex officio*. It is authorized to listen witnesses during the examination process. Its Board is obliged to file a criminal complaint against the perpetrators in case of a violation with a criminal nature.

- Within the scope of its duty to examine human rights violations *ex officio*, TIHEK issued two violation decisions in 2019²⁴ and 2023²⁵ regarding the treatment of detainees and convicts in handcuffs in health institutions.
- Handcuffed medical care is common in Turkey. The removal of handcuffs during medication depends on the decision of law enforcement officers. Despite this, the Board ignored this in both decisions and only found a violation regarding the hospital.
- Images of M. Emin Özkan, an 83-year-old disabled prisoner in Diyarbakır D-type prison, being medically treated in handcuffs were reported in the media. Similarly, Mücella Yapıcı, a detainee in the Gezi Trial, was medically treated in handcuffs while being held in Bakırköy Prison, which was also reported in the media. In both cases, TIHEK did not take an *ex officio* examination decision and disregarded these cases. These are concrete examples of TIHEK's preference among victims of violations.
- It was revealed that Garibe Gezer, who was held in pre-trial detention in Kandıra prison, committed suicide on December 9, 2021. Before her death, her lawyers and relatives shared the allegations of torture in prison with the public. They filed criminal complaints to prosecutors' offices. As a prevention mechanism, TIHEK should have initiated an *ex officio* examination and made a monitoring visit to the prison. However, TIHEK disregarded the allegations of torture and ill-treatment in the press for days. It did not conduct any examination after Gezer's death either.²⁶
- Mehmet Bozan, a prisoner in Ankara Keskin T Type Prison, died in prison on 08.08.2022. Before his death, Bozan applied to TIHEK in 2021 and claimed that he was tortured in prison. His family claimed that the prison administration was responsible for his death. The allegations were also reflected in the media.

²⁴ <https://www.tihék.gov.tr/public/images/kararlar/A44D01.pdf>

²⁵ <https://www.tihék.gov.tr/public/images/kararlar/cg1tq9.pdf>

²⁶ <https://www.gazeteduvar.com.tr/garibe-gezerin-iskence-goruntuleri-paylasildi-haber-1590901>

- Upon the allegations, the Ministry of Justice made a press release on 22.09.2012 stating that an investigation into the incident had been initiated.²⁷ TIHEK did not visit the prison after the application or after Bozan's death. 5 months after Bozan's death, TIHEK decided that there was no violation of the prohibition of torture and ill-treatment.²⁸

Visits Conducted Under the Mandate of National Prevention Mechanism

Within the scope of this mandate, TIHEK organises announced and unannounced visits to prisons, removal centres, care centres for the elderly, children and disabled, police and gendarmerie centres, psychiatric hospitals, etc. and publishes its reports on its website.

TIHEK does not have a strategy for the prevention of torture. It is not clear which centres are more at risk, which interventions will be carried out regarding torture allegations made public, and how emergency situations will be responded to.

Following the massive earthquake on 6 February 2023 affecting 11 provinces, Syrian asylum seekers and Roma people were accused of looting. Torture images of people detained on charges of looting were published in the media. Ahmet Güreşçi lost his life while in detention.²⁹ TIHEK made a press statement and announced that it was closely monitoring these incidents.

Similarly, after the earthquake, 3 prisoners died in Hatay T Type Closed Prison during the intervention to suppress the revolt of prisoners.³⁰ Despite this, TIHEK did not visit Hatay prison. In September 2023, TIHEK published a 'Monitoring Report on Post-Earthquake Events in the Context of Human Rights and Discrimination Law'.³¹ In this report, TIHEK did not include the death of A. Güreşçi and the events in Hatay prison.

The exact number of centres and other closed institutions in Turkey that fall under the mandate of the Prevention Mechanism is unknown, but it is estimated to be more than 15,000. TIHEK published reports on a total of 223 centres, 19 in 2018, 29 in 2019, 8 in 2020, 52 in 2021, 54 in 2022, 44 in 2023 and 17 as of April 2024. TIHEK states that 129 of the 223 visits were unannounced visits. A total of 17 staff work in its National Preventive Mechanism unit.³² With its current financial and human resources, it is not possible for TIHEK to fulfil its National Preventive Mechanism mandate effectively.

When unannounced visit reports are analysed;

- In many reports, it is observed that provincial governorships were requested days before the visit to assign doctors, psychologists or social workers to carry out an examination together with the TIHEK delegation, and in some cases the TIHEK delegation visited the provincial governor before the visit. Both situations make the unannounced nature of the visits questionable.

²⁷ <https://cte.adalet.gov.tr/Home/SayfaDetay/basin-aciklamasi22092022074452>

²⁸ <https://www.tihek.gov.tr/public/images/kararlar/vyrd0i.01>

²⁹ <https://www.gazeteduvar.com.tr/yagmaci-diye-gozaltina-alindi-karakolda-oldu-otopside-darp-cikti-haber-1603266>

³⁰ <https://www.evrensel.net/haber/481631/hatay-t-tipi-cezaevindeki-isyan-silah-sesi-hic-susmadi>

³¹ <https://www.tihek.gov.tr/public/editor/uploads/BiRCxLeO.pdf>

³² <https://www.tihek.gov.tr/public/editor/uploads/ENG6W4jE.pdf>

- In some cases, different centres under the same administrative unit were visited on the same day, for example, the detention rooms of different centres under the same police directorate were visited on the same day.
- There is no standard in the visit reports, for example, in some visits, the scope of view of the cameras in the visited centre was checked in some centres, but not in others.
- The language used in the reports is biased, for example, in one report it was stated that the detainees in the visited centre found the disciplinary penalties imposed by the institution administration to be fair.
- Interviews were conducted with detainees in some centres but not in others.

This situation shows that TIHEK does not have a protocol to be applied in unannounced visits and that the visits are left entirely to the initiative of the delegation.

In September 2022, TIHEK visited two institutions in Ankara with SPT experts. In the Report on the Visit to Sincan 1 No.Lu L Type Closed Penal Institution prepared after these visits, a board member dissented from the decision due to the fact that there were recommendations regarding the allegations of prisoners.

According to TIHEK visit reports, there are places in many institutions where there are no cameras or where there is no camera view. In most of the centres visited, it is observed that the staff have not received human rights and torture prevention training. In some removal centres and some prisons there are more people than the capacity. There are many centres with poor hygiene conditions.

TIHEK filed a criminal complaint about the ill-treatment witnessed by the monitoring delegation in Gaziantep Removal Centre.

Recommendations to the Committee on Turkey

- The Government should take the Constitutional Court's decision of annulment of some provisions of the institution's founding law as an opportunity to reconsider the law and to establish a national institution in line with the Paris Principles. Law No. 6701 should be amended by taking into account the recommendations of the Committee and by taking the views of relevant civil society organisations.
- TIHEK should be restructured as an institution reporting to the legislative body.
- All units established and operating to monitor closed institutions should be connected to the national prevention mechanism.
- Prisons, removal centres, child, disabled and elderly care centres should be opened to the inspection of non-governmental organisations.
- All personnel working in closed institutions should be trained on human rights and torture.
- The Law Enforcement Oversight Commission should be restructured with a focus on independent experts.