

**KEEP THE  
VOLUME UP:  
INTIMIDATION  
POLICIES  
AGAINST  
RIGHTS DEFENDERS  
2015 – 2021**

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2015 – 2021**



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**KEEP THE VOLUME UP:  
INTIMIDATION POLICIES  
AGAINST RIGHTS DEFENDERS  
2015-2021**

HAKİKAT ADALET HAFIZA MERKEZİ



**SESSİZ  
KALMA**  
Hak Savunucuları için



**“In loving memory of Hrant Dink and Tahir Elçi,  
two leading lights we’ve lost in our shared struggle for  
human rights.”**

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## Foreword

In our early years as the Truth Justice Memory Center (Hafıza Merkezi), we focused on proposing a framework for dealing with the past for Turkey, and on doing so through our documentation activities to uncover the truth about enforced disappearances. However, in recent years, we felt the need to expand our focus to include peace studies and current cases of infringements in order to respond to the new form and emergent questions that domestic politics brought forth.

As a consequence of long yet fruitful discussions, we reconsidered our working areas. We defined supporting rights organizations and rights defenders as a new field of work especially in the face of the erosion of fundamental human rights and the shrinking of civic space due to the end of the peace process with respect to Kurdish issue. The termination of the process and the coup attempt dominated the agenda in Turkey entirely in 2015 and 2016.

Beyond a doubt, the determination of rights defenders to document violations of rights and to carry out their activities in various fields, despite the aggravating oppression day by day, empowered us and gave inspiration. However, it was explicit that the practices of intense judicial harassment, intimidation, targeting, criminalization, etc. also needed to be documented and made visible. The website Sessizkalma.org, which lends its name to this report, was launched with reference

to this idea, as the most important aspect of our efforts to understand the policies carried out against rights defenders and is based on the Memory Center's experience in the fields of monitoring and documentation.

Today, we are here with an analysis of the violations identified within the scope of the work carried out to protect and support rights defenders. This report, which aims to expand the monitoring studies we carry out within the scope of [SessizKalma.org](http://SessizKalma.org), and which we believe sheds light on important aspects of resistance against the violations of rights that rights defenders are exposed to, is the joint product of the Keep The Volume Up project team working under "Supporting the Human Rights Organization and its Defenders" program and the Legal Studies team.

We hope that the practices aiming to neutralize and discredit rights defenders by using all the apparatus of law and disregarding all the responsibilities imposed by international human rights conventions will come to an end in the face of the power of solidarity, and this report will contribute to the development of counter-interventions for the rights defenders who constantly broaden their struggle against the shrinking of the civic space and the denial of the most fundamental rights.

***Burcu Bingöllü / HAFIZA MERKEZİ***

## Executive Summary

“Keep The Volume Up For Rights Defenders” project was initiated in 2018 by Truth Justice Memory Center, Association for Monitoring Equal Rights and the Netherlands Helsinki Committee to protect and empower rights defenders in Turkey while the country was going through a period when the civic space was besieged by attacks, rights defenders who continue their legitimate struggles in the civic space were targeted, and the pressure on rights defenders became extremely intense, widespread and aggressive.

The analysis of diverse qualified data on the [SessizKalma.org](http://SessizKalma.org) website (“Keep The Volume Up”), where the profiles of rights defenders whose rights have been violated are included demonstrate and verify that the interventions that restrict civic space and restrain rights defenders are effectuated by means of the enactment of new laws that will disrupt the activities of the civil society; malicious enforcement of the fight against terrorism and national security laws; the abusing of administrative and judicial powers; controlling media outlets; making unfounded news, and conducting smear campaigns.

The analysis reveals with concrete indicators that the judicial mechanism plays a central role in interventions against rights defenders. The timing or swiftness of the judicial harassment practices suffered by rights defenders perpetuated by the influence of the dependent structure of the High Council of Judges and Prosecutors (HSK) indicates how the judiciary is instrumentalized for political aims.

It is perspicuous that the procedural guarantees required by the right to a fair trial are almost completely averted in the judicial proceedings regarding rights defenders. Criminalization of legal and legitimate actions, and accusations against rights defenders for actions that do not constitute a crime stand out as the most common

practice. It is seen that none of the standards of protection measures are complied with in judicial processes. In the majority of the judicial proceedings against rights defenders, the evidence is gathered illegally and evaluated unlawfully. Fair and impartial tribunal principles are not followed, the prosecution and the suspects/defendants are not treated equally during the trial, the accusation is valued above defense and the rights of the suspect/defendant are not respected. It is overt that certain important documents in the file were concealed from the rights defenders on trial during some of the examined judicial processes. Decisions made by the courts, such as indictments and opinions as to the accusations, are based on presumptive accusations that are completely frivolous. Verdicts of conviction, on the other hand, are ambiguous when viewed from an objective point of view, and evaluations are unjust, inconsistent and unjustified.

The performance of the courts in Turkey in complying with the standards of the European Court of Human Rights (ECHR) has not progressed despite the judicial reforms, legislative changes aimed at protecting rights and freedoms, and training of judges and prosecutors, and continues to go backwards day by day. Non-compliance with the judgements of the Constitutional Court (AYM) exacerbates the situation.

Another dimension of the interventions aimed at shrinking the civic space and silencing rights defenders is the decisions of public authorities. It is possible to discuss these decisions under two groups as those for the right to assembly and demonstration and those for rights in working life.

Since 2016, governorships and district governorships have been increasingly resorting to the practice of imposing demonstration and assembly ban decisions and closing off meeting places. There is no valid justification for these prohibition and limitation decisions, and the relevant article of the law is repeated in abstract, general terms.

It is seen that the statutory powers are used in an abusive manner. With respect to the exercise of the right to assembly and demonstration, the obligation to notify is applied as the need for authorization. The analysis discloses that prohibiting assembly is one of the most blatant justifications for interventions against rights defenders. Such gatherings, regardless of their peaceful nature, are declared illegal and it is possible for the police and gendarmerie to intervene and use force. In case the demonstration is about matters that public officials consider politically sensitive, then the degree of interference is severe. Under all circumstances, rights defenders face interference. The analyzed examples show that the most moderate intervention is an administrative fine. However, even in this case, the administrative fine applied is higher than other similar cases.

There are also cases where the violent dispersal of the gathering is manipulated by the law enforcement as a way to portray rights defenders as “criminals”.

According to the cases examined, we see that rights defenders, whose activities focus on trade union rights, are frequently faced with disciplinary actions such as relocation, administrative investigations and infringement of personal records, deductions from salary and expulsion. In addition, dismissal from public office, one of the most devastating effects of the State of Emergency (OHAL) declared in 2016 in the field of fundamental rights and freedoms, also affected rights defenders. Among those who were arbitrarily dismissed from public duties are rights defenders who practice professions such as teachers, academics and doctors. Such interferences with the right to work are used as a method of punishing rights defenders.

We perceive “problematic legislative regulations” on one side and targeting/stigmatization on the other side as the common characteristic of all these judicial and administrative harassment practices. The source and reference point of judicial and administrative harassment against rights defenders are the restrictive provisions in

the Turkish Penal Code (TCK), the Anti-Terror Law (TMK) and the Law on Meetings and Demonstrations, which can be regarded as problematic legislative regulations to the extent that they breach the equity of a statute and intendment of law in terms of fundamental rights and freedoms. These regulations, for which incompatibility with international human rights standards have been ascertained and reiterated many times at the national and international levels, are occasionally the subject of judicial reforms. However, due to various reasons such as the shortcomings of the amendments, the broad discretion granted to law enforcement units, and the lack of will for their implementation, the amendments are not reflected into practice.

Rights defenders are often marginalized through processes of targeting and discrediting, which are used with motives such as creating a counter public opinion, mobilizing the judicial authorities, and exercising influence over the judicial authorities. Examined cases reveal that the media plays a major role in these processes. Rights defenders are targeted through media campaigns, information about their fields of work and activities are deliberately distorted, people and institutions defending rights are criminalized and stigmatized. While the media is being turned into a useful instrument for oppression and harassment against rights defenders, public officials such as ministers, deputies, governors, and the head of religious affairs also increasingly discredit and target rights defenders and non-governmental organizations.

During the period covered in this report between 2015 and 2021, while the ongoing and unabated siege from all sides continued and the interventions gradually expanded their sphere of influence at crucial thresholds, the civil society developed coping methods and tried to resist the continuing oppression albeit under difficult conditions and continues to oppose the draconian practices and continue the fight for rights. Subjects in the civic space form alliances, act together and fight ad finem to push and expand the narrowed boundaries of the civil sphere by forming solidarity networks.

## **Introduction**

Today, civic space in Turkey and around the world is under severe duress. Although the majority of the governments throughout history have always adopted repressive policies to restrict civic space, we have witnessed that such oppressions have turned into a structural problem on a global scale over the past decade. Many governments around the world are trying to confine or constrict the civic space, both by abusing legal measures and powers, and by resorting to unlawful methods. This aggressive attitude, which continues to intensify with the rise of right-wing populist, authoritarian, nationalist, racist and anti-gender leaders, brings with it a decline in respect to democratic principles and values.

This period, during which fundamental rights and freedoms were interfered with in an arbitrary manner, was marked by a hostile attitude targeting different subjects who spoke out against government policies, such as politicians, members of the media and press, academics, trade unionists, professional groups, non-governmental organizations, activists, and rights defenders. These unlawful and anti-democratic interventions, whose main purpose is to silence dissident voices, range from enacting new laws that will impede the activities of civil society to abusing the current legislation maliciously, from abusing administrative and judicial powers to controlling the media and organizing smear campaigns by making unfounded news with a wide repertoire.

It is observed that the interventions against rights defenders, who are among the groups most affected by the repressive and oppressive regime that restricts civic space, have become extraordinarily harsh and prevalent. These interventions aim to silence, intimidate, deter, and ultimately discourage rights defenders who are exposed to a wide range of rights violations such as violence, harassment, threats, and intervention due to their legal and legitimate advocacy activities. This oppressive regime targets rights defenders in order to block the pursuit of rights, terrorize and intimidate the society. The diversity of interventions against rights defenders also makes it difficult to determine the methods of struggle that will make it possible to prevent them. It is precisely for this reason that it becomes essential to thoroughly diagnose interventions and develop a perspicuous insight.

Based on this current and urgent need, this report has been prepared in line with the aim of drawing a panorama of the interventions aimed at hindering the work of rights defenders in Turkey, identifying the problems and determining innovative and creative resistance strategies that can be implemented against them. Grouping the interventions against rights defenders under three main categories as those carried out by the judiciary, public authorities and the media, the report does not aim to provide a comprehensive and exhaustive analysis of all interventions but provides an overview of the most commonly observed cases.

## Research Subject and Method

This report examines the interventions against rights defenders' in Turkey to undermine and delegitimize advocacy activities. Focusing specifically on the years 2015-2016 and afterwards, when the interventions started to intensify, become systematic and more prevalent, the report addresses a total of 67 rights defenders whose profiles are featured in *Keep The Volume Up*.<sup>2</sup> These 67 rights defenders represent hundreds of people together with those on trial, both in their struggle in different fields and in collective cases. The profiles, which aim to make the oppression imposed upon the rights defenders who continue their work at risk visible in the public sphere, contain up-to-date information on the rights-based struggle of rights defenders despite difficult conditions, their contributions to the field and the harassment they have faced from public authorities, the judiciary and/or the media. The site also compiles legal documents, mechanisms and support programs created to protect rights defenders from attacks, as well as reports published by rights organizations and news in the press.

The data that provides foundation for the profiles are obtained through interviews with the rights defenders, her/his lawyer, the non-governmental organization where she/he works or the initiatives, solidarity groups and other organizations that come together to fight for rights, and through press scanning. Among the collected data, there are also files on the legal processes carried out in criminal and administrative proceedings against rights defenders. In the determination of profiles and the contents, efforts are made to provide inclusive and comprehensive information on the situation of rights defenders by paying attention to the representation of struggles in different realms of rights and to exemplifying the types of interventions that are frequently observed. The data is made public with the consent of the rights defender, and while doing this, attention is paid to the rule of not jeopardizing the holistic safety of the rights defender, their relatives and combat partners, including their psychosocial health and their physical and digital security.

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<sup>1</sup> In this study, the term “rights defender” was preferred instead of the concept of “human rights defender” with reference to international documents. One reason for this preference is that the abstract human subject in the concept of “human rights” ignores the violations that women and LGBTI+s are subjected to. Another reason is the potential to eliminate the human-centered approach to rights, which excludes ecological and animal rights in particular.

<sup>2</sup> The profiles of rights defenders at risk continue to be added to *Keep Up The Volume*, which is constantly being developed by collecting data.

The first part of the report, which is based on the analysis of diversely qualified data in Keep Up The Volume, aims to provide an overview of the interventions in the civic space and rights defenders. The first axis of this section, which follows two main axes in itself, titled "The Closure of Civil Space", points to the major interventions that have restricted the civic space in Turkey in the recent period. The second part, under the title of "Suppression of Rights Advocacy and Increasing Oppression", deals with the prevalence of interventions against rights defenders to include those who fight in many different fields of rights. Following these titles are the sections that address the legislative regulations at the source of the interventions pertaining to both axes.

The second part of the report focuses on the intervention methods aimed at rights defenders. Interventions are analyzed in terms of their source by dividing them into three categories: judicial authorities, public authorities and the media. The examination of the first two are based on criminal and administrative judicial processes and operations against rights defenders. Documents/files pertaining to these processes and operations are collected and analyzed, and the most common problematic issues and examples are conveyed. In the media analysis study, the results of the press scannings conducted on the websites of national and local online print media and television channels since the beginning of 2021 when the report was drafted are shared by focusing on the discourse targeting rights defenders and institutions.

While the practices of the judicial authorities towards rights defenders are evaluated on the basis of the independence of the judiciary, the right to a fair trial, and the right to freedom and security, the practices of the public authorities are examined on the basis of the right to assembly and demonstration, and the right to work. Targeting statements and discrediting speeches of administrative officials are also within the scope of this section. These rights-based analyses include freedom of expression as a right violated in every attack. News and columns targeting rights defenders are broadly grouped under four categories according to their content: (1) Disinformation; (2) Hate speech; (3) Targeting/Scapegoating; (4) Defamation/stigmatization. Although the news and opinion columns are divided into these categories according to their content, it is seen that the analyzed news often presents various examples of hate speech and defamation that cannot be confined in a single category.

PART ONE

**GENERAL**  
**OVERVIEW**

## 1. The Closure of Civic Space

The civic space refers to the environment in which individuals and groups in society participate in a meaningful way in political, economic, social and cultural life.<sup>3</sup> It can be said that the civic space is open, pluralistic and safe when social segments can play a role in policy development and participate in decision-making processes on issues affecting their lives, without fear of intimidation, stigma and retaliation. The existence of such a civic space depends on the effective operation of mechanisms that will ensure fundamental rights and freedoms, especially freedoms of expression, assembly and association, and thus allow dissenting opinions to be expressed.

Civil space in Turkey has constantly been tried to be kept under control. The oppressive policies and practices applied towards the civic space intensify from time to time under the influence of political developments, and at times they become relatively less restraining, but they have always continued to exist. In recent years, we have been going through a distinctive period in which oppression has become extremely intense, prevalent and aggressive. Today, almost everyone who expresses legitimate demands and opinions in the civic space, organizes by taking action to realize these, and opposes public policies is confronted with a variety of restraints. The characteristic features of this period, in which new generation methods and tactics are used to limit the mobility in the civic space, exhibit remarkable similarities with many other countries where civic space is tried to be suppressed. Such oppressive approaches, which are common all over the world, are generally discussed in the international human rights community around the concepts of “incarcerated” or “restricted civic space”.<sup>4</sup> Turkey’s striking resemblance to the other countries in question also allows the situation in the public sphere to be evaluated in the light of the current debates.<sup>5</sup>

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *United Nations Guidance Note: Protection and Promotion of Civic Space*, September 2020, p. 3, [https://www.ohchr.org/Documents/Issues/CivicSpace/UN\\_Guidance\\_Note.pdf](https://www.ohchr.org/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf).

<sup>4</sup> According to the results of the research conducted by the international non-governmental organization CIVICUS, which carries out studies to protect civic space, in November 2021, 117 of 197 countries are besieged by grave restrictions. See: <https://findings2021.monitor.civicus.org/in-numbers.html>. Based on the analysis of continuously and systematically collected data, the study classified the situation of civic space in each country under the gradually deteriorating categories of ‘open’, ‘narrowed’, ‘obstructed’, ‘repressed’, and ‘closed’. The conclusion reached is that Turkey is a repressed country. See: CIVICUS, *Monitor Tracking Civic Space*, <https://monitor.civicus.org/country/turkey/>.

<sup>5</sup> For a study that interprets the state of the civic space in Turkey through the aforementioned international literature, see: HRFT Academy, *Kuşatma Altındaki Yurttaşlık Alanı: Susturma, Baskılama ve Suçlulaştırma Pratikleri (Citizenship Under Siege: Practices of Silencing, Suppression, and Criminalization)*, Prepared by: Aslı Davas and Serdar Tekin, November 2021.

The current trend to restrict civic space is in fact one of the results of a broader wave of democratic regression that is dominating the world.<sup>6</sup> This regression, which is evident in the significant damage to the fundamental principles and institutions of democracy such as free and fair elections, pluralism, separation of powers, rule of law, and democratic participation, is common in authoritarian regimes led by elected leaders who are fed by conservative and populist political currents. In such regimes, including Turkey is, whose ultimate aim is to consolidate and maintain power, many subjects in the public sphere are attempted to be subdued by arbitrarily interfering with their fundamental rights and freedoms.<sup>7</sup>

One of the most common methods is the marginalization of certain groups and segments, which also serves to increase social polarization, and the overall polarization of society by means of this method. Factionalization and hostility for the other is imposed on the masses by using a political discourse that divides the society into supporters and dissidents in order to consolidate preserve the number of voters. These hateful discourses, which try to create a ground of legitimacy by relying on public order and the fight against terrorism, traditional lifestyle and moral values, throw women, LGBTI+s, immigrants and other disadvantaged groups and rights defenders in particular under the bus as scapegoats and alleged cause of public problems. The dominance of individuals and groups that are affirmed and acknowledged from the state supportive part of society in the public sphere prevails.<sup>8</sup>

In such a political climate where opposing views are not allowed, security policies are also on the rise. Excessive force is used by the police, even to disperse peaceful protests, while expanding the power granted to law enforcement officers. All of this is accompanied by the elimination of checks and balances, the corruption of public institutions, and the undermining of the independence of the judiciary. By instrumentalizing the judiciary, on the one hand, the armor of impunity prevents

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<sup>6</sup> The 2019 results of the annual Democracy Report prepared by the V-Dem Institute, which conducts independent research within the University of Gothenburg on the state of democracy in the world, revealed for the first time since 2001 that democratic countries are no longer a majority in the world. According to the current report for 2021, 68% of the world's population lives in autocratic states. Turkey is among the top 10 countries in the list of countries where democratic principles and values have declined very rapidly and austerely. See: Varieties of Democracy Institute (V-Dem), *Democracy Reports*, <https://www.v-dem.net/en/publications/democracy-reports/>.

<sup>7</sup> In the 2021 report of the non-governmental organization Freedom House, which evaluates the situation of fundamental rights and freedoms in its annual Freedom in the World report, Turkey got 32 points out of 100 points and ranked 146th among 195 countries in the freedom ranking. See: Freedom House, *Freedom in the World 2021*, <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>.

<sup>8</sup> For example, the creation of *government-organized non-governmental organizations* "GONGO" in order to neutralize democratic opposition in today's authoritarian regimes is a common type of pressure.

law enforcement and other public officials from being held accountable, on the other, the illegal and arbitrary use of anti-terrorism and national security laws against dissidents exacerbates.

This can be traced back to the Gezi Park protests in 2013, when the predisposition towards shrinking the civic space began to take effect in Turkey. The excessive use of force by the police against peaceful demonstrators gave the first signals that an approach that would limit the range of action in the public sphere would be adopted.<sup>9</sup> The enactment of the bill in the aftermath of the protests known publicly as the Domestic Security Package<sup>10</sup> in March 2015 manifested that security policies would become stricter in the subsequent period. The law significantly expanded the powers of the law enforcement, making everyone in society a “reasonable suspect”, and also put obstacles before of the right to peaceful demonstration. As a matter of fact, the March, 8 Feminist Night Parade, LGBTI+ Pride Parade, and Saturday Mothers/People’s sit-ins in Galatasaray Square, which have been held for years on Istiklal Street in Istanbul, began to be prevented by harsh police interventions.

After these developments, the political atmosphere of Turkey changed rapidly, adversely affecting civic space. In the June 7, 2015 elections, which took place in a tense atmosphere, The Justice and Development Party (AKP) lost its majority in the Turkish Grand National Assembly (TBMM) for the first time since 2002, when it had come to power with 40.8 percent of the vote. The Peoples’ Democratic Party (HDP), on the other hand, managed to enter the Grand National Assembly of Turkey with 80 MPs, securing the highest rate of votes in its history at 13.1 percent. One of the reasons why the elections took place in a tense atmosphere was the bomb attack on the HDP’s election rally in Diyarbakır on June 5, 2015, just two days before the elections. Similar bomb attacks were repeated in various places after the elections, especially at the Suruç massacre on 20 July 2015 and the Ankara massacre on 10 October 2015, dragging Turkey into a wave of violence. In the wake of these horrendous months during which a lot of people lost their lives and were injured, the elections were renewed on November 1, 2015, and the Justice and Development Party (AKP) came to power alone.

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<sup>9</sup> Violations caused by the actions of the police went unpunished, while many who participated in the protests were subjected to smear campaigns and lawsuits on unfair and farfetched charges. See: Amnesty International, *Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013, <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur440222013en.pdf>.

<sup>10</sup> Law No. 6638 The Law about Amending Certain Law with Police Mission and Authority Law, Military Police Organization, Duty and Authorization Law” and Certain Laws and Decrees, <https://www5.tbmm.gov.tr/kanunlar/k6638.html>.

In this process, which shook the whole country at its core, the peace process, which aimed to resolve the Kurdish issue through democratic and peaceful means, remained inconclusive. The process, which commenced with the Oslo Talks held in 2009 between the National Intelligence Organization (MIT) and the Kurdistan Workers Party (Partîya Karkerên Kurdistan – PKK), continued with the ceasefire declaration of the PKK organization in 2013, and was enacted in 2014 with a draft.<sup>11</sup> It ended in 2015 with the President's declaration that he did not recognize the Dolmabahçe Consensus, which had been announced on February 28, 2015, three months before the June 7 elections, with the participation of AKP and HDP representatives. The event that triggered the end of the process was justified with the killing of two police officers in their homes in Ceylanpınar on July 22, 2015, just two days after the Suruç massacre. Nine people on trial for alleged involvement in this incident, of which behind-the-scenes have still not been revealed, were acquitted of the murder charge after nearly three years of trials.<sup>12</sup>

The consequences of the failure of the peace process were quite devastating and conflicts resumed. After this date, the pressures on the public sphere became more and more strict over time and became a prevalent and systematic state policy. Two main historical turning points played a decisive role in this regard. First, civilian areas were heavily attacked during the curfews and police/military operations carried out in 11 provinces and at least 45 districts in the Southeast between 2015-2016.<sup>13</sup> Then, incidental to the coup attempt in July 2016 and the declaration of the state of emergency immediately after, the pressure on the public sphere reached its peak.<sup>14</sup> The oppressive effects of the State of Emergency regime, which was lifted in 2018 after

<sup>11</sup> Law No. 6551 To End Terrorism and Ensure Social Integration, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6551.pdf>.

<sup>12</sup> The PKK organization, which first laid claims to the Ceylanpınar attack and then rejected it, ended the ceasefire. With the beginning of the PKK's attacks, news of mortalities came one after another, and on August 10, the Şîmak People's Assembly, which also included the Democratic Regions Party (DBP), declared "self-governance". Making a statement on August 11, President Erdoğan said, "Whoever makes this statement will pay a heavy cost." The Union of Communities of Kurdistan (Koma Civakên Kurdistanê - KCK) also announced on August 12 that it declared "democratic autonomy" in the provinces and districts where Kurds are concentrated. In a short time, self-governance was declared in four provinces and 15 districts.

<sup>13</sup> As the investigations regarding the serious violations of rights during the curfews did not yield any results, the crimes alleged to have been committed by the personnel involved in the fight against terrorism were accepted as military crimes and the execution of legal proceedings regarding them was subject to the permission of the administration. See: OHCHR, *Report on the human rights situation in South-East Turkey, July 2015 to December 2016*, 2017, [https://www.ohchr.org/documents/countries/tr/ohchr\\_south-east\\_turkeyreport\\_10march2017.pdf](https://www.ohchr.org/documents/countries/tr/ohchr_south-east_turkeyreport_10march2017.pdf).

<sup>14</sup> The Council of Ministers convened on July 21, 2016, on the grounds that Fethullah Gülen was behind the coup attempt, declaring it a terrorist organization and calling it the "Fethullahist Terrorist Organization/Parallel State Structure (FETO/PDY)". A state of emergency was declared for three months predicated on Article no. 120 of the Constitution.

being extended seven times and remained in force for two years, have still not been completely reversed.<sup>15</sup>

After the process ridden with conflicts during the curfews, the constitutional amendment proposal to lift the immunity of deputies for whom a summary of proceedings was drawn up on 20 May 2016 was accepted by the Turkish Grand National Assembly with 376 votes in favor. After this amendment regarding the lifting of parliamentary immunities especially affecting HDP deputies, many people, including HDP former Co-Chair Selahattin Demirtaş, were prosecuted, many of them were arrested, and the deputies sentenced to trial were dismissed.<sup>16</sup> These developments affected the right to vote and stand for election and dealt a major blow to the public sphere, almost completely eliminating a particular political opposition.

During the state of emergency, civilian areas were subjected to aggravated assaults, especially with the decree laws (KHK) issued by the Council of Ministers convened under the chairmanship of the President. Most of the decree laws, which were not subject to judicial review in accordance with the Constitutional Court's judgement, were misused to suppress anti-government attitudes and criticisms in the civic space, by introducing regulations entirely beside the point and unrelated to issues required by the state of emergency. With some of the decree laws that were passed and enacted by the parliament, purges including those of judges and prosecutors, were carried out, non-governmental organizations and media outlets were closed and their assets were confiscated. Non-governmental organizations that were not closed were forced to keep their activities low-profile due to the climate of fear created and forced to practice self-censorship.<sup>17</sup>

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<sup>15</sup> Although it was decided to end the state of emergency on July 18, 2018, the powers of the state of emergency were extended for another three years with the Law No. 7145 on the Amendment of Some Laws and Emergency Decrees. The prescribed term of this law, which is known as the “permanent state of emergency law” in the public, expired on July 31, 2021.

<sup>16</sup> HDP members, whose parliamentary immunity was lifted, applied to the ECtHR. In the application of Selahattin Demirtaş, the ECtHR first examined the constitutional amendment that provided for the lifting of immunities in the Grand Chamber decision and evaluated that this amendment was not foreseeable (Selahattin Demirtaş v. Turkey (no.2) [GC], 14304/17, 22.12.2020). Later, the ECtHR ruled that Turkey had violated Article 10 of the ECHR on freedom of expression, referring to the evaluation in the case of Selahattin Demirtaş in the application made by Filiz Kerestecioğlu, one of the deputies whose immunity was lifted. (*Kerestecioğlu Demir v. Türkiye*, Application No. 68136/16, 04.05.2021). In the process of preparing this report for print, the ECtHR announced its decision regarding the applications made by 40 HDP deputies and ruled that Turkey violated Article 10 of the ECHR on freedom of expression. (*Encü v. al. v. Türkiye*, Application No. 56543/16 and the other 39 applications, 01.02.2022).

<sup>17</sup> See: OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017*, 2018, [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf).

With the emergency decrees, the President was also given the authority to appoint trustees to the municipalities, and the governors to seize the movable properties of the municipalities and dismiss their employees.

In addition to the appointment of trustees to many municipalities as a result of the implementation of this Decree Law No. 674, which mostly targeted municipalities elected from DBP, a component of HDP, many employers and officers working in these municipalities were dismissed. At the same time, hundreds of mayors and city councilors were arrested and tried, and some were punished. The trustee practice, in which the right to vote and be elected was severely violated, continued in the following years, and was used to seriously suppress a significant political opposition in the public sphere.

While the state of emergency was in effect, the Presidential Government System was adopted with the approval of the constitutional amendments proposed in the referendum held in April 2017.<sup>18</sup> With the amendments, the President was given the power to declare a state of emergency and to issue presidential decrees with the force of law (CBK) on matters necessitated by the state of emergency, as well as to appoint the majority of the members of the Council of Judges and Prosecutors (formerly the High Council of Judges and Prosecutors). In this system, which has been widely criticized for eroding the separation of powers and especially the independence of the judiciary, as well as concentrating the public power in the hands of the President, new methods have emerged to suppress the civic space.<sup>19</sup>

The COVID-19 epidemic, which was classified as a pandemic by the World Health Organization in February 2020, has provided a new excuse to maintain the repressive attitude towards the already heavily controlled civic space and to silence dissenting voices. While some of the measures taken to curb the spread of the epidemic were reasonable and necessary from a public health standpoint, many went too far,

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<sup>18</sup> The Organization for Security and Cooperation in Europe (OSCE) criticized the fact that the referendum was held under the state of emergency, in which fundamental freedoms unalienable for a democratic process were restricted. See: OSCE Limited Referendum Observation Mission, *Republic of Turkey – Constitutional Amendment Referendum 16 April 2017: Report on Preliminary Findings and Conclusions*, <https://www.osce.org/files/f/documents/2/a/311736.pdf>.

<sup>19</sup> The European Commission for Democracy by Law (Venice Commission) stated that the constitutional amendments introduced a presidential system that did not include the check and balance elements necessary to prevent an authoritarian regime. See: Venice Commission, *Turkey: Opinion on the Amendments to the Constitution*, Opinion No. 875/2017, 13 March 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e).

exacerbating the already narrowed state of civic space.<sup>20</sup> There was no transparency in public policies regarding the epidemic, and freedom to obtain and disseminate information was severely restricted, and critics of the pandemic measures faced reprisals.

With the withdrawal of Turkey from the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, known publicly as the Istanbul Convention since it signed in Istanbul, by a Presidential decision in March 2021, the civic space was once again stupendously destroyed, especially targeting women and LGBTI+ who fight for their rights.<sup>21</sup> Turkey, who was the first to sign and ratify the Convention, was also the first country to withdraw from the Convention with this decision that was deemed illegitimate and unlawful by advocates and was the subject of intense wide criticism. The withdrawal from the Istanbul Convention, the first binding human rights treaty aimed at preventing all forms of gender-based violence, was declared by the Presidency of Communications, stating that the Convention was “manipulated by a segment trying to normalize homosexuality, which is incompatible with Turkey’s social and familial values.” He therefore attempted to justify the decision by a discriminatory statement.<sup>22</sup>

The attacks, which gradually expand their sphere of influence at all these important thresholds, continue to besiege the civic space from all sides. It is seen that the attacks become more severe at certain times, according to the government’s agenda and political atmosphere. Civil society, which is exposed to the ongoing severe attacks, continues to resist the attacks by developing coping methods and to oppose anti-democratic practices and fight for rights even under difficult conditions. Subjects in the civic space form alliances, act together and fight to the end to push and expand the narrowed boundaries of the civil sphere by forming networks of solidarity.

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<sup>20</sup> Between March 2020 and March 2021, the general assemblies of associations and foundations and all kinds of in person meetings and activities, including training, seminars, workshops, were postponed in accordance with the circulars issued by the Ministry of Interior and the legal amendments. Although it is possible to organize trainings, seminars and similar meetings online, general assemblies could not be held because there is no legal regulation that allows this. It was reported that this situation disrupted the work of non-governmental organizations. See: Civil Society Development Center, “Postponement of General Assemblies Restricts Civil Society”, <https://www.stgm.org.tr/genel-kurullarin-ertelenmesi-sivil-toplum-faaliyetlerini-kisitliyor> .

<sup>21</sup> It has been announced that in accordance with the Presidential Decision No. 3718 published in the Official Gazette No. 31429 dated March 20, 2021 and Article No. 3 of the Presidential Decree No. 9, it has been decided to withdraw from the Istanbul Convention by the Republic of Turkey.

<sup>22</sup> See: Statement on Turkey’s Withdrawal from the Istanbul Convention, <https://www.iletisim.gov.tr/turkce/haberler/detay/turkiyenin-istanbul-sozlesmesinden-cekilmesine-iliskin-aciklama>.

## 2. New Legislative Regulations that Result in the Shrinking of Civic Space

The parliament plays a critical role in putting the policies aimed at suppressing the civic space into practice, making amendment in existing laws or enacting new legal regulations for this purpose.<sup>23</sup> These legislative activities, which seriously jeopardize the freedom of association, have especially targeted non-profit non-governmental organizations<sup>24</sup> that continue to operate within the framework of the legal association status in recent years. In addition to the amendments made in the Law on Associations and the Regulation on Associations, the enactment of the Law on the Prevention of the Proliferation of Weapons of Mass Destruction constituted the legal basis for limiting the field of activity of non-governmental organizations, which are of vital importance in the civil realm.

### 2.1. Amendments Made in the Law on Associations

During the period we focused on in the report, an amendment was made in the law on associations, which is often emphasized as important in terms of its effects. With this amendment<sup>25</sup> first made in the Law on Associations in 2018, personal/corporate information<sup>26</sup> must be reported via the Associations Information System (DERBIS). The Human Rights Association and the Political Science Graduates' Association filed

<sup>23</sup> With the adoption of the constitutional amendments proposed in the referendum held in April 2017, the Presidential Government System was adopted, and the number of parliamentary members was increased to 600. Legislation procedures were changed in the Presidential Government System and the President was empowered to make laws through decrees. In addition, in the general elections held on 24 June 2018, the total number of deputies of the AKP and the Nationalist Movement Party (MHP), which formed the People's Alliance, was 344, while the total number of deputies of the opposition parties Republican People's Party (CHP), IYI Party (IYIP) and HDP was 256. Thus, the ruling bloc that formed the People's Alliance had the power to easily put into effect any legal arrangement it wished by disabling the opposition. The participation of civil society in legislative work in Turkey is quite limited. According to Article 30 of the Parliamentary Rules of Procedure, parliamentary committees have the authority to call experts to get their opinions. Based on this authority, civil society can be involved in legislative work by inviting the heads of the commissions within the scope of the civil society 'expert' and speaking at the invited meetings.

<sup>24</sup> In terms of legal status in Turkey, the term non-governmental organizations refers to associations, foundations, trade unions and political parties and excludes other forms of organized civil society such as platforms, networks, initiatives and groups. In practice, the most preferred form of organization for non-profit non-governmental organizations is associations.

<sup>25</sup> See: <https://www.resmigazete.gov.tr/eskiler/2018/10/20181001-1.htm> .

<sup>26</sup> Members' name, surname, T.R. identification number, profession, education status, date of acceptance and exit from membership, central registry system number of legal entity members, legal status, name and surname of their representatives, T.R. identification numbers, personal/corporate information regarding membership acceptance and exit dates.

a lawsuit to cancel this amendment. The Council of State canceled the articles of the regulation on the grounds that it is against the principles of protection of personal data and that such a change can only be made by law, not by regulation on April 15, 2021.<sup>27</sup> However, on March 26, 2020, the same changes were made in the Law on Associations.<sup>28</sup>

As a result of the lawsuit, although the articles of the regulation that impose the obligation to notify the members of the association were canceled by the decision of the Council of State, the obligation to report the identity of the members of the association is still in effect, since the same obligation has been added to the Law on Associations. With this amendment to the law, the lack of “legal basis” pointed out by the Council of State in the annulment decision has been eliminated. The time and duration of the relevant decision suggests that they may have waited to establish this legal basis.

Considering that association memberships constitute a reason for accusation in indictments against people working in non-governmental organizations and archival records of association memberships are used to create evidence for this accusation, this legal regulation allows easy access to these records via a digital system, so any judicial or administrative harassment may occur. In addition, such a notification may create reservations for membership in non-governmental organizations.

## **2.2. Amendment of the Law on the Prevention of Financing of Weapons of Mass Destruction and Regulation on Associations**

At the end of 2020, Law No. 7262 on the Prevention of the Financing of Weapons of Mass Destruction<sup>29</sup> (Law No. 7262) entered into force. Law No. 7262 hastily passed in 2019 after the Financial Action Task Force<sup>30</sup> recommended that Turkey to “apply a targeted, risk-based approach and proportionate risk reduction measures to

<sup>27</sup> The 10th Chamber of the Council of State annulled the 1st and 2nd articles of the “Regulation on Amending the Regulation on Associations”, which was published in the Official Gazette dated 01.10.2018 and numbered 30552 on 15.04.2021 regulating the notification of the members of the association to the public.

<sup>28</sup> Articles no. 21, 22, 23, and 24 of the Law on Amendment of Some Laws.  
See: <https://www.resmigazete.gov.tr/eskiler/2020/03/20200326M1-1.htm> .

<sup>29</sup> See: <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm> .

<sup>30</sup> The *Financial Action Task Force* (FATF) is an intergovernmental organization that combats crime laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction. Established in 1989 at the meeting of the G-7 countries (USA, Japan, Germany, France, England, Italy and Canada) held in Paris, FATF sets international standards and encourages the adoption and effective implementation of legal and institutional measures in line with the standards. See: <https://www.fatf-gafi.org/home/>

nonprofits identified as at risk of abuse for terrorist financing”. It was stated that the United Nations (UN) Security Council resolutions were taken into consideration in the justification of the law and it aimed to achieve international standards in the fight against terrorism financing and money laundering.<sup>31</sup> However, with the Law No. 7262, some important changes were made in the Law on Associations and the Law on Fundraising.

While the Law No. 7262 was being prepared, many problems arose, especially the lack of any dialogue with non-governmental organizations and the ineffectiveness of the views of the opposition parties in the parliament. Contrary to what is stated in its justification, the law was designed to create serious obstacles and pressure for non-governmental organizations. There are provisions in the law that allow the dismissal of directors and employees of non-governmental organizations against whom lawsuits are filed within the scope of anti-terrorism laws, and the appointment of trustees in their place.

Non-governmental organizations and international human rights institutions<sup>32</sup> point out that the law’s overly broad and vague provisions go far beyond the recommendations given by the FATF. It is also stated that the law disregards the principle of legality, freedom of association and expression, and weakens the exercise of a number of other human rights.<sup>33</sup> Considering the fact that almost everyone who opposes public policies in Turkey, including those operating under the umbrella of associations, is exposed to unlawful investigations and prosecutions within the scope of terrorist crimes, the restrictive effect of this law on civic space in practice will be better understood.

Law No. 7262 prohibits persons convicted of terrorist crimes from serving in management and inspection bodies, thus creating the risk of seriously hindering the continuity of the activities of associations. In the implementation of this legal

<sup>31</sup> For a comprehensive assessment of the law see: [https://hakikatadalethafiza.org/wp-content/uploads/2021/05/7262-Sayili-Kanun\\_Deg%CC%86erlendirme.docx.pdf](https://hakikatadalethafiza.org/wp-content/uploads/2021/05/7262-Sayili-Kanun_Deg%CC%86erlendirme.docx.pdf)

<sup>32</sup> For the letter of the United Nations Special Rapporteurs dated 11.02.2021 see: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26004>; Venice Commission, *Turkey: Opinion on the compatibility with international human rights standards of Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction recently passed by Turkey’s National Assembly, amending, inter alia, the Law on Associations (No. 2860)*, Opinion No. 1028/2021, 6 July 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)023cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)023cor-e)

<sup>33</sup> On October 22, 2021, the FATF placed Turkey on the gray list of countries that did not put in enough effort to combat money laundering and terrorism financing. Turkey needs to take some measures to get off the gray list, and one of them is the establishment of the right to participate.

regulation, which leads to a shrinking of the civic space, the fact that investigations and lawsuits against the related persons will not be audited for a legitimate purpose and in accordance with the law, further deepens this risk.

On October 22, 2021, a new regulation amendment containing regulations to increase the control of the executive power in the context of the implementation of Law No. 7262 on associations was published in the Official Gazette.<sup>34</sup> There is a risk that this amendment to the Regulation on Associations will have consequences that will seriously narrow the civic space and limit the freedom of association.<sup>35</sup> With this amendment, associations are audited separately on laundering of assets resulting from crime and financing of terrorism, risk analysis of associations is made by the General Directorate of Civil Society Relations of the Ministry of Interior, associations are grouped as high, medium and low risk. The criteria for analysis are reviewed every year, Regulations have been introduced for associations that are determined to be at medium risk and to be subject to audit programs.

Law No. 7262 foresees that the audits of associations would be made according to the risk analysis. However, it is not stated in the law that this regulation, which was mentioned with only one sentence, would be regulated by a regulation, nor was a definition of risk included.<sup>36</sup> This situation necessitates the annulment of such an amendment, which restricts fundamental rights and freedoms, as it does not have a legal basis.

With the amendment made in the Law on Associations, the risk analysis regulation, which is not statutory, will result in more audits and restriction of the activities of the association in case any act of the members or managers are acknowledged as a terrorist activity as a result of the audits and thus the association will be determined to be high risk.<sup>37</sup> The cases filed by the Human Rights Association and the Freedom of Expression Association for the annulment of this new regulation, which directly

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<sup>34</sup> Regulation on Amendment of the Law on Associations, <https://www.resmigazete.gov.tr/eskiler/2021/10/20211021-3.htm>

<sup>35</sup> It is a remarkable detail that the relevant regulation change was made on the same day as the meeting when FATF decided to put Turkey on the gray list.

<sup>36</sup> Pursuant to the Law No. 7262, Article 19 of the Law on Associations amended with an addition stating that “It is essential that these inspections be carried out every year, not exceeding three years, according to the risk assessments to be made.”

<sup>37</sup> The Venice Commission, in its opinion on the Compliance of Law No. 7262 on the Prevention of the Financing of Weapons of Mass Destruction referred to above on compliance with International Human Rights Standards, determined that risk assessment is a pretext for increasing government control over non-governmental organizations and that its main priority is not to detect criminal irregularities.

affects the work of rights defenders, who mostly act as members or directors of an association, continue to be reviewed by the Council of State.

Besides, according to the relevant regulation amendment, there is a regulation that the general assemblies of the associations and the meetings of the board of directors can only be held online via electronic systems to be determined by the Ministry of Interior Information Technologies General Directorate. The fact that the electronic system to be used in the event that the meetings of the organs of the association is held online will be determined by the General Directorate of Information Technologies under the Ministry of Interior raises concerns that the control over civil society will increase.

### **3. Suppression of Rights Advocacy and Increasing Oppression**

Rights defender is a term used to describe any person who acts peacefully, individually or together with others, to enhance the promotion, protection and realization of human rights and fundamental freedoms. This definition, which derives from the Declaration on Human Rights Defenders adopted by the UN General Assembly in 1998, is interpreted in the light of the Information Document No. 29 published in 2004 by the UN High Commissioner for Human Rights.<sup>38</sup> The Declaration of Human Rights Defenders, which incorporates the rights and freedoms protected in binding international documents, recognizes the defense of human rights as a right and imposes an obligation on states to protect and support rights defenders.

Rights defenders come to the fore among the groups most affected by the oppressive practices that result in the shrinking of the civic space in Turkey. Although rights defenders have been struggling with violence, oppression, threats, intimidation and restrictions by both public authorities, individuals and private companies for years, they are at even more serious risk in today's environment where the civic space is surrounded by attacks. It is possible to assert that the ongoing interventions against rights defenders have become systematized, widespread and diversified in

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<sup>38</sup> UN General Assembly, *Declaration on the Rights and Responsibilities of Individuals, Groups and Social Organizations for the Promotion and Protection of Universally Recognized Human Rights and Fundamental Freedoms*, adopted on 9.12.1998 and with decision no. 53/144, A/RES/53/144, Article No. 1, <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/DeclarationHRDTurkish.pdf>; UN High Commissioner for Human Rights, *Information Document No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>. For Turkish translation, see: <https://www.sessizkalma.org/wp-content/uploads/2019/04/BM-Bilgi-Belgesi-29.pdf>

unprecedented proportions, and therefore, the defense of rights defenders itself has turned into a field of defense and struggle in practice.

In addition to rights defenders, non-governmental organizations that carry out rights-based activities in different fields in the civil field and organizations that come together in various forms are also targeted and their activities are tried to be restricted. 2015-2016 was a watershed for the oppression regime on the civil sphere in Turkey. How the multi-layered violations such as violence, retaliation, intimidation and threats to which rights defenders individually and rights-based non-governmental organizations and other organizations are collectively exposed have gradually changed and become systematic and widespread can be better comprehended by the evaluation of the assaults against the profiles featured in Keep The Volume Up.



*Head of the Diyarbakır Bar Association Tahir Elçi marches alongside thousands of lawyers to protest the draft law known in the public as “the Internal Security Package.” February 16, 2015. Photo: Burhan Özbilici, Associated Press.*

### **3.1. Punishment of Demands for Peace and Justice**

The first wave of attacks targeted Kurdish rights defenders or those who are interested in or working for human rights and peace issues related to the Kurdish

issue, mostly through curfews and police/military operations. The most devastating of these was the murder of lawyer Tahir Elçi on 28 November 2015 in Diyarbakır. Elçi, who was the head of the Diyarbakır Bar Association at the time, was assaulted with a gun while making a press statement about the damage to the Quadrupedal Minaret, one of the symbols of the city in the historical Sur district. Elçi had spent his life fighting against impunity for the crimes of enforced disappearance, torture and extra-judicial executions mainly committed against Kurds in the 1990s and how his murder was committed is still not elucidated and solved.<sup>39</sup>



*"We Can't Make a Living" rally, organized by the Confederation of Public Employees' Unions (KESK). December 19, 2021. Photo: Academics for Peace.*

While the curfews and police/military operations continued, a call for stopping civilian deaths, ending conflicts and restoring peace was made on January 11, 2016, stating that "We Will Not Be A Party To This Crime!" by Academics for Peace (BAK).

<sup>39</sup>See: <https://www.sessizkalma.org/defender/tahir-elci/>. In addition, in the years following the murder of Tahir Elçi, three investigations were launched against the Diyarbakır Bar Association upon complaints made to the Prime Ministry Communication Center (BIMER). Press releases and reports prepared to defend human rights regarding legal, political and social incidents between 2016 and 2018 were the subject of accusations. With permission from the Ministry of Justice, these three investigations later turned into lawsuits. See: <https://www.sessizkalma.org/defender/diyarbakir-barosu/>.

This call was punished through various methods. Criminal cases were brought against thousands of academics who signed the petition, hundreds of them faced administrative investigations, their passports were confiscated, they were dismissed from public service, and they were abandoned in the face of “social death”, deprived of many citizenship rights, including right to work.<sup>40</sup>

International and local human rights organizations and lawyers were prevented from entering the regions where curfews were imposed, operations were carried out, and collecting information about rights violations. Investigations and prosecutions started against the Human Rights Foundation of Turkey (TİHV), MAZLUMDER, Health and Social Service Workers’ Union (SES) and the Human Rights Association (İHD) and the managers of these associations, who were publishing reports on the subject.<sup>41</sup> The investigations were launched following Recep Tayyip Erdoğan’s targeting statement “The people who publish these reports need to be dealt with. Who are you to dare publishing such a report?”

Attorney Büşra Demir, a member of the board of directors of the İHD Şırnak Branch, who documented torture cases by monitoring autopsies at that time, was subjected to investigations due to her advocacy activities, such as reports and press releases, most of which were related to curfews.<sup>42</sup> HRFT Cizre Reference Center physician and Şırnak Medical Chamber President Dr. Serdar Küni, on the other hand, was sentenced to prison in the case brought against him regarding the prohibition period.<sup>43</sup> Nurcan Baysal, who gave her testimony regarding the situation in the houses that the special operations police entered in Cizre, was sentenced to prison for this article and was persistently targeted in the following years.<sup>44</sup>

During this period of conflicts, Özgür Gündem, the oldest newspaper published in

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<sup>40</sup> See: <https://www.sessizkalma.org/defender/baris-icin-akademisyenler/>. For more detailed information about rights defenders Füsün Üstel and Gençay Gürsoy, among the academics who were tried and sentenced for signing the declaration, see: <https://www.sessizkalma.org/defender/profesör-fusun-ustel/> and <https://www.sessizkalma.org/defender/gençay-gursoy-2/>.

<sup>41</sup> In addition, the Provincial Civil Society Relations Directorate asked the Provincial Directorate of Civil Society Relations to initiate an investigation against the Migration Monitoring Association, which published the “Report on the Violations of Rights and Experiences of Women During the Process of Curfews and Forced Migration” following the inspection of the Ministry of Interior in 2020. It was claimed that some of the statements in the report “create the perception that the legitimate institutions of the state forcibly displace their citizens and degrade the institutions of the state”. See: <https://www.sessizkalma.org/defender/goc-izleme-dernegi/>.

<sup>42</sup> See: <https://www.sessizkalma.org/defender/busra-demir/>.

<sup>43</sup> See: <https://www.sessizkalma.org/defender/serdar-kuni/>.

<sup>44</sup> See: <https://www.sessizkalma.org/defender/nurcan-baysal/>.

Kurdish, was exposed to numerous investigations, lawsuits and censorship, and on the Press Freedom Day dated May 3, 2016, a solidarity campaign called “Editor-in-Chief on Duty” was launched. An investigation was launched against 49 of the 56 on-duty editors participating in the campaign. While 11 of the investigations resulted in non-prosecution, 38 turned into lawsuits. Seven of those prosecuted in these cases were acquitted and 27 others were sentenced.<sup>45</sup> The acquittal of Şebnem Korur Fincancı, Ahmet Nesin and Erol Önderoğlu, who took part in the campaign and were detained for 10 days, was overturned by the court of appeal and the trial resumed.<sup>46</sup>

There are numerous lawsuits filed against İHD Co-Chair, lawyer Eren Keskin, who is the co-editor-in-chief of Özgür Gündem Newspaper, and a significant part of these lawsuits are those filed as the editor-in-chief of Özgür Gündem Newspaper. The total number of lawsuits filed against Keskin was 143, but after some lawsuits were combined, this number corresponded to 124. In 120 cases that were finalized, Keskin was sentenced to prison terms and fines. While the total of prison sentences reaches 26 years, 9 months and 20 days, the sum of the fines is 431 thousand 912 TL. The review of the request of appeals against some of the convictions by the authorized regional courts of appeal and the Supreme Court has not been completed yet.<sup>47</sup>

Over time, assaults were directed at rights defenders who demand peace and criticize the state’s security policies and practices, especially cross-border military operations. In January 2018, the Turkish Medical Association (TTB) was targeted by the media and public authorities for the statement titled “War is a Public Health Issue” made during the “Operation Olive Branch” organized by the Turkish Armed Forces (TSK) in Afrin. Following this, an investigation was launched against 11 TTB member rights defenders. Rights defenders, who were taken into custody and released with a judicial control measure, stood trial within a few months and were sentenced after three hearings.<sup>48</sup> TTB members and TTB Medical Chambers continued to be targeted and subjected to

<sup>45</sup> See: <https://www.sessizkalma.org/defender/ozgur-gundem-dayanisma-davasi/>. Nadire Mater, the Chairman of the Board of Directors of IPS Communication Foundation and Independent Communication Network (BIA) projects consultant, was one of the rights defenders who were tried and sentenced in the Özgür Gündem Solidarity Case. See: <https://www.sessizkalma.org/defender/nadire-mater/>.

<sup>46</sup> See: <https://www.sessizkalma.org/defender/erol-onderoglu/> and <https://www.sessizkalma.org/defender/sebnem-korur-fincanci/>.

<sup>47</sup> See: <https://www.sessizkalma.org/defender/eren-keskin/>.

<sup>48</sup> See: <https://www.sessizkalma.org/defender/turk-tabipleri-birligi/>. TTB former Central Council President Prof. Dr. Raşit Tükel was among the 11 rights defender physicians who were tried and sentenced in the TTB Case. For more detailed information about Tükel, who is also on trial in the BAK case, see: <https://www.sessizkalma.org/defender/rasit-tukel/>. While Dr. Şehmus Gökalp was sentenced in the TTB trial, he was later acquitted in the lawsuit filed against him regarding the Democratic Society Congress (DTK). See: <https://www.sessizkalma.org/defender/seyhmus-gokalp/>.

judicial harassment in the following period.

Lawyer Öztürk Türkdoğan, who made a press statement on behalf of the İHD after the death of 13 people/soldiers detained by the PKK organization in Turkey's military operation in the Gare region in Northern Iraq in February 2021, was taken into custody from his home in the early hours of the morning. Türkdoğan, who was released in the evening of the same day, had declared in his statement that it was risky to conduct an operation at the place where the detainees were kept. Subsequently, Minister of Interior Süleyman Soylu said, "Since 1984, the terrorist organization has carried out massacres of 6021 civilians. When that damn so-called association İHD utters a word about them, you immediately tag along after them" targeting İHD.<sup>49</sup>



*Öztürk Türkdoğan with his colleagues at the Human Rights Association Turkey's (İHD) headquarters in Ankara.*

Lawyer Nurcan Kaya was detained at the airport in October 2019, upon criticizing the statement of the Ministry of Foreign Affairs stating that the Peace Spring Operation, organized by the Turkish Armed Forces in Northern Syria, which is condemned internationally for causing grave human rights violations in conformity with UN principles and rules. Expressing her criticism via Twitter, Kaya was sentenced one year and three months in prison on the charge of "making propaganda for a terrorist

<sup>49</sup> See: <https://www.sessizkalma.org/defender/ozturk-turkdogan/>. The statements made by Öztürk Türkdoğan as the President of the İHD during the period when this report was being prepared for print, an indictment was prepared by the Ankara Chief Public Prosecutor's Office as per article 314/2 of the Penal Code and this indictment was accepted by the Ankara 19th High Criminal Court. The case is still ongoing.

organization” at the decision hearing in September 2021. This verdict, sentencing Kaya for tweeting a quote from a speaker in the panel she attended, was postponed.<sup>50</sup>

### 3.2. Use of State of Emergency Regulations Against Rights Defenders

The second wave of attacks came after the declaration of the state of emergency and targeted a much wider segment beyond the individuals and institutions held responsible for the coup attempt. Many associations, foundations, trade unions and media organizations were closed down with 36 statutory decrees issued during the state of emergency between 20 July 2016 and 17 July 2018.<sup>51</sup> Among the associations that were closed without any justification based on concrete evidence were MEYADER, YAKAYDER, Akdeniz GÖÇDER, Contemporary Lawyers Association (ÇHD), Libertarian Lawyers Association (ÖHD), Mesopotamia Lawyers Association (MHD), Van Women’s Association (VAKAD), Human Rights Research Association (İHAD), Sarmaşık Association and Agenda Children’s Association.<sup>52</sup> While associations that were not closed had to restrict their activities for fear of being closed, investigations were launched against some of the members and managers of the closed associations.<sup>53</sup>

Procedural safeguards against torture and other ill-treatment were also weakened by the Emergency Decrees.<sup>54</sup> With the Decree No. 667, the duration of detention was increased to 30 days and with the Decree No. 668, prohibition of meeting with a

<sup>50</sup> See: <https://www.sessizkalma.org/defender/nurcan-kaya/>.

<sup>51</sup> According to the 2020 Activity Report of the State of Emergency Commission, 1410 associations and 109 foundations were closed with decree laws.

For detailed information: [https://ohalkomisyonu.tcgb.gov.tr/docs/OHAL\\_FaaliyetRaporu\\_2020.pdf](https://ohalkomisyonu.tcgb.gov.tr/docs/OHAL_FaaliyetRaporu_2020.pdf)

<sup>52</sup> First, it was announced that 1125 associations were closed with the first decree numbered 667 dated July 23, 2016. See: <https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>. Later, on 11 November 2016, it was announced by the Ministry of Interior that the activities of 370 associations were halted/suspended for three months. Then, a total of 375 associations were closed, including those whose activities were suspended with the Decree Law No. 677, published on November 22, 2016. See: <https://www.resmigazete.gov.tr/eskiler/2016/11/20161122-1.htm>.

<sup>53</sup> Selim Ölçer, a member of the board of directors of Sarmaşık Association, which was closed with the Decree-Law issued in November 2016, was tried for the activities of the association and sentenced to two years and one month in prison on the charge of knowingly and willingly helping the organization even though he was not included in the organizational structure of the organization. See: <https://www.sessizkalma.org/defender/selim-olcer/>. Selahattin Güvenç, the head of the closed Akdeniz GÖÇDER, was charged with «membership in a terrorist organization» for his work in tent cities in the Çukurova region after he was detained in an operation in Mersin in March 2018. See: <https://www.sessizkalma.org/defender/selahattin-guvenc/> Güvenç, who was treated in a private hospital in Mersin due to a cerebral hemorrhage during the preparation of this report, passed away.

<sup>54</sup> After this date, it was reported by the İHD that taking statements, interviewing, spying and kidnapping through oppression and threats became the state’s repression policy. See: <https://www.ihd.org.tr/2021-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>.

lawyer during the first 5 days of detention was instated and this practice was applied uninterruptedly for six months. In the following months of the state of emergency, the duration of detention was reduced from 30 days to 14 days, and the ban on lawyers to meet their clients in custody was reduced to the first day. Ten rights defenders detained in the Büyükada Case were affected by the extended detention periods within the scope of the state of emergency measures. In addition to the ban on access to the investigation file, Taner Kılıç was prevented from meeting with his lawyer for a long time with respect to the consolidated file.

Although the state of emergency ended on July 18, 2018, the “permanent state of emergency” regime was introduced with new legal regulations that remain in effect and continue to lead to grave practices that have an impact on fundamental rights and freedoms remain. Accordingly, the detention period can be extended to 12 days, practices of dismissal from public office continue, the governors have authority to prohibit the entry and exit of certain persons to certain regions of the city for 15 days, officials have the authority to prohibit people from going out on the streets at certain places and at certain hours without specifying the duration, as well as the authority to prohibit the vehicles from entering the traffic and to ban meetings and demonstrations. Regulations were introduced to grant new powers such as limiting demonstration marches and forcing early dispersal. The term of the law numbered 7145, which is described as the “Permanent State of Emergency Law”, expired on July 31, 2021, and the government’s state of emergency powers were extended for three more years with a new omnibus bill, again citing the “fight against terrorism”.

### **3.3. Criminalizing the Struggle for Human Rights**

In the attacks that became fully widespread during the state of emergency, rights-based NGOs and rights defenders who took part in or supported their work were targeted. In July 2017, 10 rights defenders who came together for a training workshop on coping with stress and digital security in Istanbul Büyükada, organized by the decision of non-governmental organizations under the umbrella of the Human Rights Joint Platform (İHOP), were detained in a police raid.<sup>55</sup> Eight of the rights defenders

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<sup>55</sup> Rights defenders detained: İdil Eser (Director of Amnesty International Turkey), Özlem Dalkıran (Helsinki Citizenship Association), Günal Kurşun (Human Rights Agenda Association), Veli Acı (Human Rights Agenda Association), Ali Garawi (Swedish citizen – human rights educator), Peter Steudtner (German citizen – human rights educator), Nalan Erkem (Helsinki Citizenship Association), Şeyhmus Özbekli (Rights Initiative), İlknur Üstün (Women’s Coalition) and Nejat Taştan (Watch for Equal Rights Association). For more detailed information about Günal Kurşun, Özlem Dalkıran and İdil Eser, who were sentenced to prison as a result of the trial, see: <https://www.sessizkalma.org/defender/gunal-kursun/>, <https://www.sessizkalma.org/defender/ozlem-dalkiran/> and <https://www.sessizkalma.org/defender/idil-eser/>.

who were able to inform their relatives 30 hours after their detention were arrested, while two of them were released on condition of judicial control. The indictment of the Büyükada Case was announced about three months later, and in this process, the detained rights defenders were kept in prison without knowing the charges against them. While various prison sentences were issued against four rights defenders in July 2020, seven rights defenders were acquitted.<sup>56</sup>



*In front of the Silivri Penitentiaries Campus.*

Osman Kavala was detained and arrested at the airport in October 2017. It was claimed that Kavala was the leader of the Gezi Park protests. A year after his arrest, in November 2018, detention warrants were issued for 20 people, including academics, rights defenders and civil society workers, on the grounds that they and Kavala acted in a hierarchical order. After the police raids on their homes, 13 of the 20 people for whom detention warrants were issued, all but one were released.<sup>57</sup> With the indictment issued more than a year later, the Gezi Case was filed against Kavala and 16 people, including four of those detained. The acquittal of all defendants at the decision hearing held in February 2020 was overturned by the court of appeal in January 2021, and the retrial was initiated.<sup>58</sup>

<sup>56</sup> See: <https://www.sessizkalma.org/defender/buyukada-davasi/>. Taner Kılıç was detained and arrested before the police raid on Büyükada, and in the first hearing about a month later, the case he was on trial for was combined with the Büyükada Case. See: <https://www.sessizkalma.org/defender/taner-kilic/>.

<sup>57</sup> Rights defender Yiğit Aksakoğlu, who was among those detained, was the only person for whom an arrest warrant was issued. Aksakoğlu was released at the first hearing of the case, after being detained for about three months without an indictment. He is still being tried on pending trial. See: <https://www.sessizkalma.org/defender/yigit-aksakoglu-2/>.

<sup>58</sup> See: <https://www.sessizkalma.org/defender/gezi-davasi/>. Among the rights defenders on trial in the case is Mücella Yapıcı, who was previously tried and acquitted regarding the Gezi Park protests. For more detailed information about Yapıcı, see: <https://www.sessizkalma.org/defender/mucella-yapici/>.

During this process, Kavala was kept in detention on the grounds of another investigation opened against him. After this investigation, which allegedly claimed that he was part of the decision process of the July 15 coup attempt, turned into a lawsuit and it was decided to combine the case with the Gezi Case, which was returned from appeal in February 2021. The Çarşı Case, which started to be heard again after the reversal decision issued by the Supreme Court in July 2021, was added to the combined cases. Thus, Kavala continues to be held in pre-trial detention despite the ECtHR ruling that he should be released in the case, which has been turned into a “merged case”.<sup>59</sup>

İHD members and administrators, who have struggled with oppression since its establishment, began to be subjected to more intense investigations and prosecutions during the period when the civic space was besieged by attacks. Raci Bilici, who served as İHD’s director and Diyarbakır Branch chairman, was detained in 2017 pursuant to his rights advocacy activities, mostly related to the “peace process” on behalf of the İHD, and was released with a ban on leaving the country. Bilici was sentenced to six years and three months in prison on the charge of “membership in a terrorist organization” at the decision hearing held in March 2020.<sup>60</sup> Moreover, there are investigations and prosecutions opened against former President of İHD Siirt Branch Zana Aksu and İHD Balıkesir Branch President Rafet Fahri Semizoğlu for their advocacy activities on behalf of İHD.<sup>61</sup>

İHD Bitlis Branch Chairman Hasan Ceylan was detained and arrested in March 2017 due to his activities within the framework of İHD’s statute and program. Ceylan was sentenced to seven years and six months in prison on the charge of “membership in an armed terrorist organization”.<sup>62</sup> Gönül Öztürkoğlu, the head of the İHD Malatya Branch, was arrested after being detained by the police in an operation against civil society leaders and rights defenders in November 2018. In the second hearing of the case brought against him, Öztürkoğlu, who was released with a ban on leaving the country, was sentenced to six years and three months in prison on the charge of “membership in an armed terrorist organization” for his work on behalf of the İHD.<sup>63</sup>

<sup>59</sup> See: <https://www.sessizkalma.org/defender/osman-kavala/>.

<sup>60</sup> See: <https://www.sessizkalma.org/defender/raci-bilici-2/>.

<sup>61</sup> See: <https://www.sessizkalma.org/defender/zana-aksu-2/> and <https://www.sessizkalma.org/defender/rafet-fahri-semizoglu/>.

<sup>62</sup> See: <https://www.sessizkalma.org/defender/hasan-ceylan/>.

<sup>63</sup> See: <https://www.sessizkalma.org/defender/gonul-ozturkoglu-2/>.

### 3.4. Suppression of Peaceful Protests

It has become quite common practice for the right to peaceful protest to be severely disrupted by the police using excessive force and for rights defenders who organize or participate in protests to be suppressed through criminal and administrative procedures. Among those exposed to this practice are two of the thousands of public officials dismissed by statutory decrees, academics Nuriye Gülmen and teacher Semih Özakça, who held a protest in front of the Human Rights Statue on Ankara Yüksel Street in November 2016. Some of the rights defenders who supported the protest, which started as a sit-in with the demand “I Want My Job Back” and continued with a hunger strike after a while, were detained by the use of excessive police force and underwent a judicial investigation.<sup>64</sup>



*Justice Watch at the İstanbul's Çağlayan Courthouse. April 26, 2018.*

After Cumhuriyet Daily's executives, writers and lawyers were detained and arrested in October 2016, the Justice Watch action initiated by lawyers was also attempted to be stopped. The police intervened harshly in some of the actions of the lawyers, who stood guard in front of the Themis Statue in İstanbul Çağlayan Courthouse every Thursday for 85 weeks. During these interventions, in which the police used

<sup>64</sup> For example, rights defender Ozan Devrim Yay, who is also an academic and was dismissed from his job with the Statutory Decree, was tried for opposing the State of Emergency Law because he participated in this action to support it. There are other investigations and trials opened against Yay, who is the co-chairman of the Eskişehir-based Life Memory Freedom Association, due to his advocacy activities. See: <https://www.sessizkalma.org/defender/ozan-devrim-yay/>.

excessive force, some lawyers were injured and 10 lawyers were prosecuted. Although the lawyers who were tried pending trial were acquitted of this case, neither police violence nor judicial harassment against the Justice Watch ended.<sup>65</sup>

Police intervened in the 700th week meeting of Saturday Mothers/People, who have been holding a peaceful sit-in in Galatasaray Square every Saturday since the 1990s to inquire about the fate of their disappeared relatives, in August 2018 with water cannons, rubber bullets and tear gas, and arrested numerous people using excessive force. A lawsuit has been filed against 46 people who were taken into custody following the targeting statements of the Minister of Interior Süleyman Soylu, accusing Saturday Mothers/People of “trying to create legitimacy for terrorist organizations”. Rights defenders continue to be held pending trial in this case and Saturday Mothers/People’s gatherings continue to be blocked by tight restrictions.<sup>66</sup>



*Emine Ocak (one of the Saturday Mothers) is taken into custody at the 700th weekly meeting of Saturday Mothers/People. August 25, 2018. Photo: Hayri Tunç.*

The protests, which were launched by the students in January 2021 against the appointment of rector of Boğaziçi University Melih Bulu by presidential decree, which

<sup>65</sup> For detailed information on the investigations and prosecutions conducted against Kemal Aytaç, the architect of the Justice Watch and the defender of rights, see: <https://www.sessizkalma.org/defender/kemal-aytac/>.

<sup>66</sup> See: <https://www.sessizkalma.org/defender/cumartesi-anneleri-insanlari/>.

later turned into large protests were tried to be sternly suppressed. While the Istanbul Governor's Office declared a ban on demonstrations twice, the police raided the campus, dispersed the demonstrations using excessive force, and detained hundreds of people in house raids. Some of the detainees were released with a judicial control measure, some were placed under house arrest, and some were arrested. Hundreds of people continue to be prosecuted. During the protests, LGBTI+ students were targeted by the President of Religious Affairs, the Minister of Interior, and the media because of a work in the exhibition held on campus, and Boğaziçi University LGBTI+ Studies Club was closed.<sup>67</sup>



*Boğaziçi University students are gathered at the North Campus to protest the newly appointed rector Melih Bulu following his appointment with a Presidential decree-law. January 4, 2022. Photo: Ozan Acidere.*

### 3.5. Attacks Against LGBTI+s and Women

LGBTI+s and women are among the groups most targeted by attacks in the civic space. The 9th Pride Parade, organized by the Middle East Technical University

<sup>67</sup> See: <https://www.sessizkalma.org/defender/bogazici-dayanismasi/>. LGBTI+ activist Yıldız İdil Şen, who was detained in a house raid in January 2020, announced that she was subjected to sexual harassment in custody due to gender identity. See: <https://www.sessizkalma.org/defender/yildiz-idil-sen/>. Naci İnci, who was appointed to serve as a substitute after Melih Bulu's dismissal in July 2021, dismissed Can Candan, who had been working at the university for many years, on the same day. For more detailed information about Candan, who was also prevented from entering the campus at later dates, see: <https://www.sessizkalma.org/defender/can-candan/>. Feyzi Erçin's classes, who teaches at Boğaziçi University and provides legal support to those detained during the protests, were also terminated and he has not been allowed to enter the campus since then. See: <https://www.sessizkalma.org/defender/feyzi-ercin/>.

(METU) LGBTI+ Solidarity on campus in May 2019, was banned by the Rectorate and faced harsh intervention by the police. After 21 students and a lecturer, including METU LGBTI+ Solidarity members, were detained and released, an administrative investigation was launched against them by the university administration. Later, lawsuits were filed against 18 students and lecturers and LGBTI+ rights defenders at the university were targeted through various smear campaigns, their houses were raided by the police, they were detained, and their Student Loans and Dormitories Institution (KYK) scholarships were cut off.<sup>68</sup>



*Following the police attack towards METU's 9<sup>th</sup> Pride Parade held on May 10, 2019, students called for a boycott in response to police violence on campus. Photo used with the permission of METU LGBTI+ and the ÜniKuir Association. May 14, 2019.*

The women, who started to repeat the choreography of the Chilean feminist Las Tesis organization to protest sexual assault and violence against women in Istanbul, Ankara, Izmir and Antalya in November 2019, were stopped by the police. The police brutally intervened in the protest held in Kadıköy in December 2019 and a lawsuit was filed against six women after they were detained by putting on reverse handcuffs. The police intervened harshly in the protest in Ankara and 10 women were dragged on the ground and detained. While the protest in İzmir was not interfered with, a lawsuit was filed against 25 women afterwards. The action held at Ankara University was first targeted and then stopped by police intervention, and eight students were detained

<sup>68</sup> See: <https://www.sessizkalma.org/defender/odtu-lgbti-dayanismasi/>.

and released. Women students participating in the protest were expelled from their dormitories by KYK and their scholarships were cut off.<sup>69</sup>

Women and LGBTI+s, who started to take action against the heated polemic on withdrawing from the Istanbul Convention in the second half of 2020, against which smear campaigns have been waged on the grounds that it “impairs the Turkish family structure” and “prepares the legal ground for homosexuality” since its entry into force, faced harsh police interventions. Protests in Istanbul, Ankara, Izmir, Mersin and Diyarbakir were blocked, women and LGBTI+s participating in the demonstration were beaten and detained.<sup>70</sup> While some women who organized protests in Beşiktaş and Mersin were sentenced to administrative fines, a lawsuit was filed against 33 women who protested in Ankara. After the decision to rescind the Istanbul Convention, harsh police interventions continued, and detention and administrative fines were maintained.<sup>71</sup>

In May 2020, waves of detentions and arrests began against the directors and members of the Diyarbakir-based Rosa Women’s Association, which works to combat violence against women. In three waves of police operations, women from the Rosa Women’s Association were detained, some with judicial control, some with house arrest, and some at later stages of the proceedings. During their interrogations at the police and prosecutor’s office, they faced charges for their actions such as organizing the March 8 rally and forming a purple convoy against sexism in traffic. While some of the women’s rights defenders, against whom different lawsuits have been brought together and separately, are punished, some continue to be prosecuted.<sup>72</sup>

Nimet Tanrıkulu, who has been fighting for human rights for many years and against whom numerous investigations and prosecutions have been initiated, was detained by the police who came to her home at midnight after the peaceful Feminist Night March on 8 March 2021. An investigation was launched against 17 women on charges of “insulting the President” due to slogans such as “Tayyip, run and run, the women are

<sup>69</sup> See: <https://www.sessizkalma.org/defender/las-tesis-eylemcileri/>.

<sup>70</sup> LGBTI+ activist İsmail Temel, who was among those detained in the action organized by İzmir Women’s Platform in Alsancak, fainted as a result of the police violence, and had to leave his home and job because the police disclosed his sexual orientation to his family against his will and claimed that he was a member of some illegal organizations. See: <https://www.sessizkalma.org/defender/ismail-temel/>.

<sup>71</sup> See: <https://www.sessizkalma.org/defender/istanbul-sozlesmesi-savunuculari/>. Women from Mersin Women’s Platform were fined many times after their campaign launched in 2019 titled “Prevent Femicide Immediately!” and they also faced heavy administrative fines for the Istanbul Convention Vigil they kept after the withdrawal decision. See: <https://www.sessizkalma.org/defender/mersin-kadin-platformu/>.

<sup>72</sup> See: <https://www.sessizkalma.org/defender/rosa-kadin-dernegi/>.

coming” and “Jump, jump, who does not jump is Tayyip” chanted during the Feminist Night March. In August 2021, this investigation was completed and an indictment was filed, and a criminal case was initiated against women who participated in non-violent action and shouted slogans.<sup>73</sup>

### 3.6. Oppression of Lawyers

Lawyers and lawyer organizations, especially those who advocate for rights defenders, are among those who have been attacked in the public sphere.<sup>74</sup> ÇHD member lawyers, who undertook important cases regarding the Soma and Ermenek mine massacres and Nuriye Gülmen and Semih Özakça who protested against purges by statutory decrees, became the symbol of the unlawfulness that lawyers are exposed to. Lawyers from the ÇHD were subjected to serious “judicial harassment” after being systematically targeted. Eighteen lawyers were sentenced to heavy prison terms and the decisions regarding 14 lawyers were approved by the Supreme Court and became final.<sup>75</sup>

Lawyer Sevda Çelik Özbıngöl, whose house was raided by the police and who was then arrested in an operation held in three provinces in March 2020, sets a good example of being punished because of her clients.<sup>76</sup> During her trial for the professional activities, she was held in custody for nine months and released with a ban on leaving the country in the fourth hearing in December 2020. As a conclusion of the trial, Özbıngöl was sentenced to a total of 11 years and six months through the combination of six years and six months for membership in an organization, one year and three months for violation of the law no. 2911 three times, and one year and three months for propaganda of a terrorist organization.<sup>77</sup>

<sup>73</sup> For more detailed information about Tanrikulu, who is also on trial in the DTK trial, see: <https://www.sessizkalma.org/defender/nimet-tanrikulu/>.

<sup>74</sup> For a more detailed study of the state of the legal profession, see: Faruk Eren, *Savunmasız Yargı*, Truth Justice Memory Centre, Monitoring for Equal Rights, Netherlands Helsinki Committee, <https://hakikatadalethafiza.org/wp-content/uploads/2021/08/Savunmasiz-Yargi.pdf>.

<sup>75</sup> See: <https://www.sessizkalma.org/defender/cagdas-hukukcular-dernegi-avukatleri/>.

<sup>76</sup> As a consequence of the house raids carried out in three cities on the morning of 12 March 2020, Mesut Beştaş, Özkan Avcı, Zeynep Işık, Bahar Oktay and Osman Çelik from Diyarbakır Bar Association, Hidayet Enmek, Sevda Çelik Özbıngöl, Emrah Baran, Hüseyin İzol, Metin Özbadem, Cemo Tüysü and Şeyhmus İnal from Şanlıurfa Bar Association and Gürgün Kadirhan from Şırnak Bar Association were detained.

<sup>77</sup> See: <https://www.sessizkalma.org/defender/sevda-celik-ozbingol/>.

### 3.7. Obstruction of the Ecological Struggle

Increasingly widespread attacks on civic sphere also target rights defenders who are fighting for ecological rights and trying to stop the destruction of nature. For example, Ali Ekber Barmağıcı, President of Munzur Environment Culture and Solidarity Association, which aims to stop the ecological destruction in the surrounding area, was detained in a police raid in June 2020 and arrested four days later. In the first hearing held in October 2020, it was decided to apply a judicial control measure against him, and he was released. At the decision hearing of the case held in November 2021, it was decided that he would be punished for “making propaganda for a terrorist organization”.<sup>78</sup>

The vigil held by the Green Artvin Association, which was organized against the threat of establishing a gold and copper mine in Cerattepe, was stopped with the police intervention in February 2016 using tear gas and rubber bullets. In the following years, the members and administrators of the association were repeatedly targeted, threatened, and many lawsuits were filed against them on different charges. A total of 60 people were tried in different cases brought on charges within the scope of the Law No. 2911 on Meetings and Demonstrations. Some of them were sentenced, some of them acquitted and a stay of execution was issued for some of them.<sup>79</sup>



The resistance of the Green Artvin Association (Yeşil Artvin Derneği) at Cerattepe, 2015. Photo: Eren Dağıştanlı.

<sup>78</sup> See: <https://www.sessizkalma.org/defender/ali-ekber-barmagic/>.

<sup>79</sup> See: <https://www.sessizkalma.org/defender/yesil-artvin-dernegi/>.

The Water and Conscience Watches, which were organized against the ecological destruction caused by the gold mine operator company Alamos Gold in Kazdağları, have been sentenced to administrative fines since the watch began. However, during the period of the COVID-19 pandemic, these penalties, which were intended to prevent the action, were increased significantly. The commemoration event to be held in July 2020 for the first year of the vigil was blocked by the Çanakkale Governor's Office with the prohibition of action announced throughout the province. Rights defenders who were preparing for the action were subjected to harsh police intervention, 20 people were detained and released. Water and Conscience Watches were evacuated from the action areas with the gendarmerie raid in September 2020.<sup>80</sup>

The lawsuit filed in 2011 against 37 rights defenders from the Green Gerze Platform, which was established against the thermal power plant to be built in the Gerze district of Sinop, for resisting the entry of the company's construction machinery into the region, was concluded in January 2021, 10 years later. Even though the thermal power plant project was officially canceled in 2015, it was decided to give prison sentences to rights defenders who were tried for "violating the freedom to work and labor", "resisting the security forces to prevent from doing their duty", "damaging public property", "deliberately setting fires in the land", "participating in illegal meetings and demonstrations with arms" and "organizing and leading illegal meetings and demonstration marches".<sup>81</sup>

The inhabitants of Muğla İkizköy, who started a vigil to defend the Akbelen Forest, which was intended to be destroyed in order to expand the lignite mine field, which is the fuel source of the Yeniköy-Kemerköy thermal power plants, faced both the intimidation and threats of the company that operates the thermal power plants, as well as the obstruction by the public authorities. In August 2021, the gendarmerie forcibly removed the activists and their lawyers from the vigil, using excessive force. The lawyers were also insulted by the judge during the discovery and expert panel proceedings in various cancellation cases filed in administrative courts to protect the forest.<sup>82</sup>

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<sup>80</sup> See: <https://www.sessizkalma.org/defender/su-ve-vicdan-nobetcileri/>.

<sup>81</sup> See: <https://www.sessizkalma.org/defender/yesil-gerze-platformu/>.

<sup>82</sup> See: <https://www.sessizkalma.org/defender/ikizkoy-akbelen-savunuculari/>.

### 3.8. Silencing Public Health Criticism

Scientist rights defenders who make critical comments on the government's public health management are also among those affected by the assaults. Bülent Şık, who specializes in food analysis techniques, was tried and sentenced in September 2019 for announcing the results of the Ministry of Health project on residue analysis of toxic chemical substances in food. This sentencing decision for Şık, who investigated the possible link between increasing cancer cases in western Turkey and soil, air and water pollution, and revealed that the food and water samples he obtained were dangerously contaminated, was later overturned by the appeal, but the prosecutor objected to the decision to overturn it.<sup>83</sup>

During the COVID-19 pandemic, investigations were launched against those who expressed their criticism of the pandemic management for their criticism of measure to protect public health and health workers. Bursa Medical Chamber member public health expert Prof. Dr. Kayıhan Pala stated, "We think that we have not yet seen the peak of the epidemic in Turkey," and an investigation was launched against him upon his statement. It was decided to close the investigation on the grounds that his statements were within the scope of academic freedom of expression.<sup>84</sup> On the other hand, the investigations launched in April 2020 against two directors of the Urfa Medical Chamber based on their Twitter accounts about the number of cases in the city continue.<sup>85</sup>

The head of the Van-Hakkari Medical Chamber at that time, psychiatrist Dr. Özgür Deniz Değer was called to the police station upon his interview titled "A single virus case makes the entire prison sick" published in the Mezopotamya Agency and gave a statement to the police on the charge of "stirring up fear and panic among the people."<sup>86</sup> The co-chairman of the Mardin Medical Chamber at that time Dr. Osman Sağlam was also summoned to testify in March 2020 due to his statements to the Mezopotamya Agency and Gazete Duvar. Stating that the measures taken against the epidemic were insufficient, Sağlam's statement was taken by the police on the charge of "stirring up fear and panic among the people."<sup>87</sup>

<sup>83</sup> See: <https://www.sessizkalma.org/defender/bulent-sik/>.

<sup>84</sup> See: <https://www.sessizkalma.org/prof-dr-kayhan-pala-hakkindaki-sorusturma-sonlandirildi/>.

<sup>85</sup> See: <https://www.sessizkalma.org/defender/urfa-tabip-odasi/>.

<sup>86</sup> See: <https://www.sessizkalma.org/defender/ozgur-deniz-deger/>.

<sup>87</sup> See: <https://www.sessizkalma.org/defender/osman-saglam/>.

### 3.9. The Suppression of the Labor Struggle and Trade Union Movements

Attacks targeting the labor struggle of workers and unions are carried out by the government as well as employers, companies and other private individuals. One of the striking examples of this is the attacks to which Makum Alagöz, the former President of the İzmir Branch of the Deriteks Syndicate of Türk-İş and the current Chairman of the union, was subjected. Many companies operating in the leather-textile field have filed criminal and compensation cases against Alagöz. Four lawsuits filed by company executives based on his social media posts on the dismissal of employees in a leather company where they participated in the unionization activity are still ongoing.<sup>88</sup>

Başaran Aksu is a trade unionist who has been detained countless times for his speeches and actions he participated in, and dozens of investigations have been opened against him. There are two ongoing lawsuits and an investigation against Aksu, who was physically attacked by 400 people and was hospitalized for three months while working for the Maden-Sen organization in Soma in 2014.<sup>89</sup> In this planned attack organized by the group said to have been provoked by the employers in the mines, Kamil Kartal, the organization expert of the Independent Maden-İş Union, who works for union organization together with Aksu, was also targeted. Kartal, against whom many lawsuits have been filed due to his union activities, has a prison sentence without a final judgement on the grounds that during the lawsuit process of the miners who lost their lives in Soma, he insulted the Akhisar Police Chief during the confrontation between the police and trade unionists.<sup>90</sup>

The workers of the Third Airport opened in Istanbul, on the other hand, set one of the best examples of the government's oppressive attitude towards workers. Workers and trade unionists, who started protests in September 2018 against occupational homicides in the rushed construction of the airport, heavy working conditions, and cleaning problems in dormitories and cafeterias, were obstructed with harsh interventions. The police intervened in the protests with tear gas, many people were detained with ill-treatment, and lawyers were not allowed visitation in custody. Thirty one of the workers and trade unionists who were detained in different actions were kept in confinement for about three months. The lawsuit filed against 61 workers accused of "resistance to refuse to do their duty," "violation of freedom of work and labor," "damage

<sup>88</sup> See: <https://www.sessizkalma.org/defender/makum-alagoz/>.

<sup>89</sup> See: <https://www.sessizkalma.org/defender/basaran-aksu/>.

<sup>90</sup> See: <https://www.sessizkalma.org/defender/kamil-kartal/>.

to public property” is still ongoing.<sup>91</sup>

Workers who raise their voices about working conditions in the public sector are also tried to be silenced by the government in various ways. Tugay Kartal, an employee of the Republic of Turkey State Railways (TCDD), who has been involved in the trade union struggle for years and is an active member of Haydarpaşa Solidarity, faced a decision of relocation of his post, which means exile, in May 2020. The reason for the change of duty was tried to be justified as his attempts to inform the public regarding train accidents such as Pamukova and Çorlu, Haydarpaşa station and port projects, the staffing in the institution, and exposing the mistakes made. Upon the cancellation lawsuit filed by Kartal, the administrative court decided to cancel the change of post decision.<sup>92</sup>

Pilot Bahadır Altan, on the other hand, was tried to be intimidated because of his union activities and public disclosure. He was fired from his job for the first time in 2008 due to a press release criticizing Turkish Airlines’ aviation profession ethics and the way it applies flight safety rules. A lawsuit was filed against him for the speech he made in 2019 about the negligence of Atlasjet Airlines that caused the crash of the Isparta plane. His statement, which caused him to lose his job for the second time, was the speech he made on the live broadcast he participated in 2020, about the role played by Istanbul Third Airport in the crash of the Pegasus Airlines plane during its landing.<sup>93</sup>

It has been observed that the pressure on labor unions has aggravated during the COVID-19 pandemic. For example, Revolutionary Workers’ Unions Confederation/ Textile Gaziantep Regional Representative<sup>94</sup> Mehmet Türkmen, who announced on his social media account that workers were forced to work in factories despite the epidemic, was detained in a house raid after he was targeted on a local news site. He was released after his statement was taken at the police station on the charge of “provoking the people to hatred and enmity”.<sup>95</sup>

<sup>91</sup> See: <https://www.sessizkalma.org/defender/ucuncu-havalimani-iscileri/>.

<sup>92</sup> See: <https://www.sessizkalma.org/defender/tugay-kartal/>.

<sup>93</sup> See: <https://www.sessizkalma.org/defender/bahadir-altan/>.

<sup>94</sup> Mehmet Türkmen, who was the DISK/Textile Gaziantep Regional Representative when he was detained, was expelled from his duty at DISK in 2021 without any justification. Turkmen, who founded the United Textile Weaving and Leather Workers’ Union (BIRTEK-SEN), continues to defend workers’ rights in Gaziantep.

<sup>95</sup> See: <https://www.sessizkalma.org/defender/mehmet-turkmen/>.

## 4. Legislation and Accusations Used to Prevent Rights Advocacy

The source of attacks against rights defenders is generally certain legal regulations in the Turkish Penal Code, the Anti-Terror Law and Law No. 2911 on Meetings and Demonstrations. It has been determined many times at the national and international level that these regulations contain restrictive provisions that infringe on the essence and equity of fundamental rights and freedoms. Although some amendments have been made in these regulations with the judicial reforms over time, both the wide discretion granted to the practitioners and the lack of will to implement the changes cause the amendments not to be reflected in practice and more concretely in the proceedings.<sup>96</sup> The situation of rights defenders arises because the necessary amendment with respect to these laws are not made adequately or the amendments made are not implemented effectively.

When we examine the cases where the rights defenders in Keep The Volume Up are prosecuted, “Membership of a Terrorist Organization”, “Committing a Crime on Behalf of a Terrorist Organization”, “Aiding a Terrorist Organization”, “Provoking the People to Hatred and Enmity” and “Insulting the President”, which are often regulated in the Penal Code, and “Making Propaganda for a Terrorist Organization” enacted also in Turkish Penal Code, and “Opposing the Law No. 2911 on Meetings and Demonstrations” enacted by Law No. 2911 are the main accusations and allegations. It is necessary to emphasize that even if the people tried on the basis of these charges are eventually acquitted, the trials continue for years and create a deterrent effect on the use of freedom of expression, and to underline that these cases violate the obligation of the state to ensure an environment that protects different opinions.

The actions that lead to these accusations being leveled against rights defenders mostly occur as a result of the use of democratic rights, such as the rights defender's participation in the press release, sharing posts on social media, and participation in demonstration marches. Prosecutors and judges do not take into account the freedom of expression as a right and the rules for the limitation of this freedom when accusing

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<sup>96</sup> During the state of emergency, according to the official statistics of the Ministry of Justice, while 4,187 people were prosecuted for insulting the President in 2016, this number increased to 6,033 people in 2017. While the number of people prosecuted in the cases opened in 2016 for insulting the Turkish Nation and the Republic of Turkey was 482, this number increased to 753 in 2017. While 17,322 people were prosecuted in 2016 for making propaganda for a terrorist organization, this number increased to 24,585 people in 2017. Rights defenders are a significant part of the people against whom are these cases are filed.

rights defenders of these crimes. However, freedom of expression is at the core of rights advocacy. Prosecutors and judges disregard freedom of expression, as well as the rights defender identity of individuals.

According to the ECtHR, freedom of expression constitutes “*one of the fundamental foundations of a democratic society, one of the essential conditions for the progress of society and the development of every human being. Freedom of expression applies not only to information or ideas that are considered favorable or deemed harmless or unworthy of attention, but also to information or ideas that are offensive, shocking or disagreeable to the state or a segment of the population. They are a requirement of pluralism, tolerance and open-mindedness*”.<sup>97</sup> The ECtHR applies a gradual test when assessing freedom of expression on a case-by-case basis.<sup>98</sup> The most important stage in this gradual test is the democratic society. The ECHR counts pluralism, tolerance and open-mindedness as sine qua non of a democratic society.

Council of Europe bodies such as the Human Rights Commissioner and the Parliamentary Assembly have also stated in their opinions and reports about Turkey that one of the most important problems is freedom of expression and freedom of the press, and that people, including politicians, journalists, rights defenders and academics, are systematically investigated and prosecuted for their dissenting views and have underscored that individuals faces heavy prison sentences and judicial harassment, and that the penal laws are used to silence and punish dissidents.

Of the total of 85 decisions that the ECHR ruled in 2021 as a violation of freedom of expression, 31 were issued against Turkey.<sup>99</sup> The inspection of important class cases is still ongoing In front of the Committee of Ministers of the Council of Europe, which is the body responsible for supervising the implementation of the ECtHR decisions in domestic law.<sup>100</sup> There are violation of freedom of expression decisions, which

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<sup>97</sup> *Handyside vs. United Kingdom*, Application No: 5493/72, 07.12.1976, paragraph 49; *Dink vs. Turkey*, Application No: 2668/07, 6102/08 and 30079/08, paragraph 123, 14.09.2010.

<sup>98</sup> Whether the interference is prescribed by law, whether the interference prescribed by law has one of the legitimate aims listed in the ECHR, and whether the interference prescribed by this law is proportionate and necessary in the democratic social order is examined in stages. The court has decided in various jurisprudence that this gradual test should also be applied to the measures taken by the competent authorities in order to protect national security and public order within the scope of the fight against terrorism.

<sup>99</sup> For the annual report statement of the EctHR, see: [https://www.echr.coe.int/Documents/Annual\\_report\\_2021\\_ENG.pdf](https://www.echr.coe.int/Documents/Annual_report_2021_ENG.pdf).

<sup>100</sup> The Committee of Ministers of the Council of Europe, within the scope of the ECtHR's oversight task by grouping similar violations, provides a review on the basis of general measures to be taken to resolve systemic problems that lead to the repetition of similar violations, as well as individual measures that need to be specifically implemented to ensure the implementation of each ECtHR decision.

are followed under 16 groups by the Committee of Ministers. It is known that these decisions point to structural problems and that Turkey has prepared action plans to solve these structural problems, but does not act in accordance with these plans.

#### **4.1. Misuse and Exploitation of the Anti-Terror Law**

Since the concept of “terror” in the Anti-Terror Law is defined very broadly and vaguely,<sup>101</sup> the United Nations, the Council of Europe, the European Union mechanisms and non-governmental organizations frequently give warnings and recommendations that it should be abolished. In the relevant warnings and recommendations, it is stated that the vague definition of the concept of “terror” causes the law to be applied to acts that do not constitute the crime of “terrorism”. Despite the fact that many revisions have been made in the Anti-Terror Law within the scope of the harmonization process with the European Union, it is possible to put the rights defenders under pressure because the problems arising from the law are not resolved and the practitioners are given a wide margin of discretion. Since this definition is so broad, anything can fall under it. For example, a criminal charge can be made under the Anti-Terror Law by making use of the broad definition of “terrorism” for the press statement made by the rights defender, for the meeting of the lawyer with the client in prison, for academics signing a statement or for being in solidarity.

##### ***a) The Crime of Making Propaganda for a Terrorist Organization***

One of the most common accusations that rights defenders face is making propaganda for a terrorist organization. This accusation is also brought against the vast majority of legally harassed rights defenders in *Keep Up The Volume*. For example, Nadire Mater, Şebnem Korur Fincancı, Erol Önderoğlu and Ahmet Nesin, who worked as the editor-in-chief on duty in solidarity with Özgür Gündem daily, were tried for this crime.

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<sup>101</sup> Article 1 of the Anti-Terror Law includes the following regulation:

*Definition of terror*

Article 1 – (Amended paragraph: 15/7/2003-4928/20 art.) Terrorism; is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of using force and violence and by pressure, intimidation, oppression or threat methods.

The second paragraph of Article 7 of the Anti-Terror Law regulates the crime of “making propaganda for a terrorist organization”.<sup>102</sup> With the amendment made in 2013 in order to harmonize this article with the standards of the European Convention on Human Rights (ECHR), it is regulated that statements that do not contain “incitement to violence” will not be penalized, but the accusations made based on this article continue to be applied in a way that violates the freedom of expression.

On the other hand, with the initiation of the courts of appeal in 2016, prison sentences of less than five years for making propaganda for a terrorist organization were not subject to the appeal examination at the Court of Cassation and became final as a result of the appeal examination at the immediate higher court. In 2019, the sentence “*Expressing opinions that do not exceed the limits of reporting or that are made for the purpose of criticism do not constitute a crime*” was added to the end of the article with the Judicial Reform Package<sup>103</sup> in 2019, and appeal in higher courts was made possible in the proceedings regarding crimes related to freedom of expression. However, it is possible to say that the sentence added to the article related to the Judicial Reform Package will not make any difference in practice. For example, after this law amendment, an appeal was filed against the convictions of 27 people who were punished for being the chief editor on duty, in solidarity with Özgür Gündem daily. Although the act subject to these convictions brought to the Court of Cassation is fully within the scope of “reporting” added to the law, the opinion of the Chief Public Prosecutor’s Office of the Supreme Court of Appeals for the approval of the sentences shows that this legal change has no effect in practice.

There are many violation decisions given by the ECtHR against Turkey due to the convictions given without determining whether the content in question encourages violence or not. Due to the increase in violation decisions, with respect to the case of *Gözel and Özer vs. Turkey*<sup>104</sup>, based on Article 46 of the ECHR, the court identified

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<sup>102</sup> The second paragraph of Article 7 of the Anti-Terror Law includes the following regulation: “(Amended second paragraph: 11/4/2013-6459/8 art.) Terrorist organization; a person who makes propaganda in a way that justifies or praises its methods containing force, violence or threat or encourages the use of these methods is punished with imprisonment from one year to five years. If this crime is committed through the press and broadcasting, the penalty to be imposed is increased by half. In addition, those responsible for broadcasting who did not participate in the commission of the crime of the press and broadcasting organs are also sentenced to a judicial fine from one thousand days to five thousand days. (Additional sentence: 17/10/2019-7188/13 art.) Expressions of opinions that do not exceed the limits of reporting or that are made for the purpose of criticism do not constitute a crime”.

<sup>103</sup> The Law No. 7188 on the Amendment of the Criminal Procedure Code and Some Laws was approved by the Turkish Grand National Assembly on October 17, 2019. The law was approved by the President on October 24, 2019, and was published in the Official Gazette and entered into force.

<sup>104</sup> *Gözel and Özer vs. Turkey*, Application No: 43453/04 31098/05, 06.07.2010.

the existence of a systematic problem in this regard, and it was monitored by the Committee of Ministers.<sup>105</sup>

***b) Crimes of membership in an organization, committing a crime on behalf of an organization and aiding an organization***

The number of people prosecuted for the crimes listed under this heading is increasing day by day in Turkey. Rights defenders, journalists, students, dissidents, politicians and many other groups can be exposed to these accusations. Understanding these crimes and determining the difference between them is very difficult due to the ambiguity of the definitions in the law. Organized crimes are categorized in two different ways in Anti-Terror Law as “criminal organization”<sup>106</sup> and “armed organization”.<sup>107</sup> Among these regulations, “armed organization” is the form of the criminal organization established for political purposes and higher penalties are foreseen.

In Article 314 of the Anti-Terror Law, which is the regulation on an armed organization, reference is made to Article 220 of the Anti-Terror Law regarding a criminal organization. The transitivity between the two regulations due to this reference reinforces the ambiguity in terms of the actions constituting the crime, and the scattered and substituted arrangement of the law articles allows for arbitrary use. While this transitivity was used to punish those who participated in the protests with heavy penalties<sup>108</sup> in the 2000s, we see that during the period this report focuses on, rights defenders are often tried and punished for crimes such as membership of an organization, committing crimes on behalf of the organization, and helping the organization.

<sup>105</sup> See: <https://hudoc.exec.coe.int/eng?i=004-37326>

<sup>106</sup> In the first paragraph of Article 220 titled “forming an organization to commit a crime”, *crime organization* is defined as follows: “Those who establish or manage an organization with the aim of committing acts deemed as a crime by the law are punished with imprisonment from four to eight years, provided that the structure of the organization, the number of members it has, and the means and equipment are suitable for committing the purpose crimes. However, for the existence of the organization, the number of members must be at least three people.”

<sup>107</sup> Article 314 pertaining to armed organization of Turkish Penal Code is as follows: “(1) Any person who establishes or commands an armed organization with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years. (2) Any person who becomes a member of the organization defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years. (3) Other provisions relating to the forming of an organization in order to commit offences shall also be applicable to this offence.”

<sup>108</sup> For a detailed analysis, see: Human Rights Watch, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 2010, <https://www.hrw.org/sites/default/files/reports/turkey1110tuwebwcover.pdf>

A “criminal organization” is defined as a structure that has a continuous hierarchical relationship and division of labor, in which at least three people come together, have the means to commit a crime. According to the law and the jurisprudence of the Court of Cassation, a “member of an organization” is accepted as a person who adopts the purpose of the organization, is included in the hierarchical structure of the organization, and abandons his will to the will of the organization in order to be ready to fulfill the duties to be assigned in this way. Members are required to establish an organic bond with the organization and participate in its activities.<sup>109</sup>

While the boundaries of “criminal organization” and “member of a terrorist organization” can be determined relatively, there is a wide range of action in terms of “committing a crime on behalf of a terrorist organization” and “aiding a terrorist organization”. Namely, it is not required for a person to be in the hierarchical order of the organization in order to be punished as “*perpetrators of crimes on behalf of the organization*”.<sup>110</sup> Even if she/he is not a member of the organization, committing a crime on behalf of the organization because of her/his “sympathy” for the organization or to gain benefit is considered sufficient for a person to be punished as a member of the organization. This paves the way for violations of rights and for punishing people as if they were members of an organization without meeting the concrete criteria (organic bond, continuity-intensity criteria) required for membership in the organization. These regulations, which open up an unlimited scope for investigation and punishment for the law enforcement officers, offer the opportunity to consider a democratic act and/or even a press statement as a crime. This regulation, which is frequently used against rights defenders, is quite threatening in terms of making advocacy activities impossible through the judiciary.

A similar situation is also applies for the crime of aiding the organization. The regulation in the Turkish Penal Code stipulates that the person who “*aids and abets the organization*”<sup>111</sup> can be punished for being a member of the organization without

<sup>109</sup> All these criteria sought for the determination of organization membership in the Supreme Court decisions are called “organic bond, continuity-density criteria”.

<sup>110</sup> Turkish Penal Code Article 220/6: (Amended on: 2/7/2012 – 6352/85 art.) Any person who commits an offence on behalf of an organization, although he is not a member of the organization, shall also be sentenced for the offence of being a member of the organization. The sentence to be imposed for being a member of that organization may be decreased by half. (Additional sentence: 11/4/2013-6459/11 md.) This provision shall only be applied in respect of armed organizations.

<sup>111</sup> Turkish Penal Code Article 220/7: (Amended on: 2/7/2012 – 6352/85 art.) Any person who aids and abets an organization knowingly and willingly, although he does not belong to the structure of that organization, shall also be sentenced for the offence of being a member of that organization. The sentence to be imposed for being a member of that organization may be decreased by one-third according to the assistance provided.

being a member of the organization. In the face of the uncertainty of what actions will lead to aid and abet crime, we see that this regulation also creates an unlimited scope for investigation and punishment for law enforcement officers. For example, the alleged crimes of Özlem Dalkıran, Günal Kurşun and İdil Eser, who were convicted of “aiding a terrorist organization” in the Büyükada Case, were to conduct a training study on data protection and methods of coping with stress.

According to the opinion of the Venice Commission, declared in 2016 regarding Articles 216, 299, 301 and 314 of the TPC,<sup>112</sup> the regulation that makes it possible to punish a person who commits a crime on behalf of an organization also for being a member of an organization should be completely abrogated, and it is recommended that the scope of use in connection with “membership of an armed organization” should not be applied to cases involving freedom of expression in case the regulation is not abrogated.

#### **4.2. Provoking the Public to Hatred, Hostility or Degrading**

One of the charges that rights defenders face due to their advocacy activities is the crime of provoking the public to hatred and hostility or degrading of the public, which is regulated in Article 216 of the TPC.<sup>113</sup> Abstract expressions such as “explicitly inciting hatred and enmity” and “emergence of an explicit and imminent danger in terms of public safety” in the regulation show that the legislator leaves the task of determining the limits of freedom of expression to the enforcement authorities with this article.

It was also determined by the Venice Commission that this legal regulation was used to punish harsh criticisms of government policies.<sup>114</sup> Former directors of the Turkish Medical Association were sentenced to prison for the crime of “provoking the public to hatred and hostility” due to their statement titled “War is a Public Health

<sup>112</sup> Venice Commission, *Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey*, Opinion No. 831/2015, 15 March 2016, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

<sup>113</sup> *Provoking the Public to Hatred, Hostility or Degrading*

Article 216 - (1) A person who publicly provokes hatred or hostility in one section of the public against another section which has a different characteristic based on social class, race, religion, sect or regional difference, which creates an explicit and imminent danger to public security shall be sentenced to a penalty of imprisonment for a term of one to three years.

(2) A person who publicly degrades a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a penalty of imprisonment for a term of six months to one year.

(3) A person who publicly degrades the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace.

<sup>114</sup> See: footnote 112, Opinion No. 831/2015 regarding articles no. 216., 299., 301. and 314. of Turkish Penal Code

Issue” in 2018, criticizing the intervention in Afrin.. DİSK Tekstil Gaziantep Regional Representative Mehmet Türkmen was also charged with this crime because of his social media posts about the workers who were forced to work despite the COVID-19 pandemic. Zana Aksu, former head of the İHD Siirt branch, was sentenced to one year in prison for her news article titled “The name of the province where speaking up against the massacre is defined as a crime, Siirt”, which she made after the bomb attack in the Suruç district of Urfa in July 2015, in which 34 people lost their lives, and her social media posts on the subject.

However, in the 2016 opinion of the Venice Commission, it is stated that the article should not be used to include particularly harsh criticism unless it encourages violence and uprising.

### **4.3. Degrading Turkish Nation, the State of Turkish Republic, the Organs and Institutions of the State**

Another legal regulation, which has been widely discussed in Turkey for many years and which has not become lawful even with the many changes it has undergone, and is once again left to the discretion of the practitioner, Article 301 of the TPC,<sup>115</sup> is prominently grounds for the judicial harassment that rights defenders are subjected to.

The Migration Monitoring Association continues to be investigated for this article because of its informative booklet titled “Guiding Guide for Forced Displaced Persons in the Country” published in 2019. The lawsuit filed against the former directors of the Diyarbakır Bar Association on charges of “Degrading the Turkish Nation and Provoking Hatred and Hostility” pursuant to the press release titled “April 24 / The Great Catastrophe: We Share the Grief of the Armenian People” in 2017 is still ongoing.<sup>116</sup>

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<sup>115</sup> *Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State* Article 301- (Amended on: 30/4/2008-5759/1 art.)

- (1) A person who publicly degrades Turkish Nation, State of the Turkish Republic, Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced a penalty of imprisonment for a term of six months to two years.
- (2) A person who publicly degrades the military or security organizations shall be sentenced according to the provision set out in paragraph one.
- (3) The expression of an opinion for the purpose of criticism does not constitute an offence.
- (4) The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice.

<sup>116</sup> While the report was being prepared for print, all of the bar association executives were acquitted in the case before the Diyarbakır 13th High Criminal Court; but the decision has not been finalized yet.

The most important change in the law to date was made in 2008.<sup>117</sup> With the amendment, the concepts of “Turkishness” and “Republican” were changed to “Turkish Nation” and “State of the Republic of Turkey”, respectively. In addition, the upper limit of the prison sentence that can be applied if individuals are found guilty was reduced and the reasons for aggravated sentences were removed from the article. Finally, for additional assurance, starting an investigation against a person under this article was subject to the permission of the Ministry of Justice.

Despite these changes, the ECtHR identified significant problems in the Hrant Dink and Taner Akçam cases.<sup>118</sup> Journalist Hrant Dink was convicted of this crime and was assassinated because of the atmosphere created by this trial. In these decisions, the ECtHR stated that Article 301 was not measurable, the fact that the Ministry of Justice had the authority to authorize the investigation did not provide sufficient assurance, that the changes made in the law were not reflected in practice, and that arbitrary practices were always possible.

#### 4.4. Insulting the President

The crime of insulting the president<sup>119</sup> has been frequently used in recent years to suppress a large group, including rights defenders. Although the upper penalty limit stipulated in this article does not foresee an arrest measure, it has become public that many arrests took place.<sup>120</sup> The crime of insulting the President is interpreted and applied in an unprecedented way compared to similar articles in other Council of Europe member states.

During the period of Recep Tayyip Erdoğan presidency, the total number of investigations opened for the crime of “insulting the President” reached 160,169. Three thousand 625 people were sentenced to prison. The number of people who

<sup>117</sup> Emphasizing that this amendment was not sufficient, the Venice Commission stated that the legal regulation should be made more clear and specific and should be limited to expressions that incite violence and hatred. See: footnote 112, Opinion No. on Articles 216, 299, 301 and 314 of the Turkish Penal Code. 831/2015

<sup>118</sup> *Dink vs. Türkiye*, Application No: 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, 14.09.2010; *Akçam vs. Türkiye*, Application No: 27520/07, 25.09.2011.

<sup>119</sup> Article 299 of the TPC titled “Insulting the President” is as follows:

- (1) Any person who insults the President of the Republic shall be sentenced to a penalty of imprisonment for a term of one to four years.
- (2) (Amended on 29/6/2005 – By Article 35 of the Law no. 5377) Where the offence is committed in public, the sentence to be imposed shall be increased by one sixth.
- (3) The initiation of a prosecution for such offence shall be subject to the permission of the Minister of Justice.

<sup>120</sup> For instance, <https://m.bianet.org/kurdi/insan-haklari/161063-16-yasindaki-cocuk-cumhurbaskanina-hakaretten-tutuklandi>

were prosecuted as a result of these investigations, on the other hand, increased dramatically in 2015 after the last president took office.<sup>121</sup>

	Number of persons against whom criminal cases were filed for Insulting the President
2020	7790
2019	11371
2018	4880
2017	5281
2016	3999
2015	2076
2014	110

The fact that the President is also the head of a political party and that the offense of insulting the President is still in effect while there is also the offense of insult is clearly against the principles of the rule of law and equality before the law. In addition, this regulation, which protects the head of state more than all other citizens and creates a privileged position for the head of state before the law, creates a ground for interference with freedom of expression.

Although the Constitutional Court rejected the requests<sup>122</sup> regarding the annulment of the article, the ECtHR stated in its Şorli decision on this crime in October 2021 that “increased protection by a special criminal law is not in principle compatible with the spirit of the Convention”.<sup>123</sup> On the other hand, in the same decision, it was stated that prevention of violations could only be possible by repealing the relevant article. The court decided that the regulation regarding this crime should be restructured in line with the case law of the ECtHR. This ECtHR decision is the first decision given by the ECHR regarding this crime. The most important reason for this is thought to be that the number of people investigated for this crime during the previous presidents was

<sup>121</sup> See: <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>.

<sup>122</sup> In 2016, Karşıyaka 7th Criminal Court of First Instance and İstanbul 43rd Criminal Court of First Instance applied for the annulment of the offense of insulting the President, regulated under Article 299 of the Turkish Penal Code, as it is unconstitutional. Constitutional Court, E.2016/25, K.2016/186, 14.12.2016.

<sup>123</sup> Şorli vs. Turkey, No: 42048/19, 19.02.2021.

quite low compared to today.

The Venice Commission, in its opinion announced in 2016, stated that the violations of rights created by Article 299 of the TPC have not been remedied, on the contrary, there has been a significant increase in the number of cases, and determined that the only remedy for the elimination of these violations of freedom of expression is the abolition of the article.<sup>124</sup>

#### **4.5. Crime of Opposing the Law on Assemblies and Demonstrations**

One of the most frequent judicial interventions that rights defenders are subjected to is based on this crime. Press statements and peaceful actions made individually or together with non-governmental organizations of which one is a member are interfered with under the pretext of this article. Those who exercise their right to protest are exposed to ill-treatment or face years of trials. However, freedom of assembly and demonstration is the most fundamental element for the continuation of a democratic society. In this context, the exercise of the said freedom has priority.

Article 34 of the Constitution guarantees the right to assembly and demonstration in accordance with international standards, with the statement that “everyone has the right to organize unarmed and peaceful meetings and demonstration marches without prior permission”. Despite this constitutional guarantee, Article 28 of the Law No. 2911 on Assemblies and Demonstrations is regulated with a punitive logic and becomes one of the articles frequently resorted to against rights defenders.

Article 28 of the Law<sup>125</sup> stipulates that “those who organize or lead illegal meetings or demonstrations and participate in their activities” will be punished. In the same article, new barriers are placed in front of the exercise of the right to assembly and

<sup>124</sup> See footnote 112, Opinion No. 831/2015 pertaining to articles no. 216., 299., 301. and 314. of TPC.

<sup>125</sup> *Acts against the prohibitions*

Article 28 – (Amended on: 23/1/2008-5728/422 art.) Those who organize or lead unlawful meetings or demonstrations and participate in their activities are sentenced to imprisonment from one year, six months to three years, unless the act constitutes a separate crime requiring a heavier penalty.

Those who are shown as a member of the organizing committee in the notification to be made pursuant to Article 10, and who do not have the qualifications specified in Article 9, shall be sentenced to imprisonment for up to one year in case of holding a meeting or march.

Members of the organizing committee who do not fulfill the duties specified in Articles 11 and 12 are sentenced to imprisonment from six months to two years.

From two to five years, unless their actions require a heavier penalty, for those who prevent security forces or (...) those assigned to detect the meeting or marching phase with technical tools and equipment, by force and violence or threats, or exerting influence and effective force while performing their duties. shall be sentenced to imprisonment.

demonstration, with the statement that those who participate in the demonstration march will be punished within the scope of this article only if they do not violate any other law. Although six amendments were made to this law, which has been the focus of criticism especially by international human rights institutions, after 2002, the law continues to be a threat to the exercise of the right to assembly and demonstration. It is often found that the entire law is against freedom of expression and needs to be changed completely.<sup>126</sup>

As a matter of fact, an Action Plan on the Prevention of Violations of the European Convention on Human Rights,<sup>127</sup> including a section on “Preventing the interventions on the Meetings and Demonstrations that are not intended to incite violence or that do not contain an element of violence and avoiding the imposition of sanctions” was adopted by Turkey in 2014. Objectives such as reviewing the law numbered 2911 in line with the ECtHR standards, training law enforcement officers, and establishing the existence of an explicit and imminent danger in case of obstruction were set. However, despite all these goals, the law continues to be interpreted broadly by practitioners as a result of the actual political will, and remains an obstacle to exercising the right to assembly and demonstration.

On the other hand, Article 100 of the Criminal Procedure Code (CMK), which regulates the reasons for detention, prohibits the decision to arrest for crimes whose prison sentence does not exceed two years and stipulates that the measure for arrest should be moderate. In the same law, Article 109, which regulates the reasons for judicial control (such as the obligation to sign or house arrest), seeks the existence of the reasons for arrest. However, these regulations are again disregarded by the law enforcement officers, suspects of the crime can be arrested or subjected to judicial control with house arrest.

At the beginning of 2021, some of the demonstrators' houses were raided as the protests continued after Melih Bulu, a former AKP deputy candidate contender, was appointed as rector by the President's decision at Boğaziçi University. Various measures were taken against the students who were detained by breaking the doors of their houses. Many students were arrested or a judicial control decision was issued for them to not to leave their residence.

<sup>126</sup> See: <https://ihd.org.tr/en/wp-content/uploads/2018/09/Ceza-Mevzuatindaki-Adaletsizlikleri-Gidermeye-Donuk-IHD-Onerileri-Raporu.pdf>

<sup>127</sup> See: <https://diabgm.adalet.gov.tr/Resimler/SayfaDokuman/2492019165516Avrupa%20İnsan%20Hakları%20Sözleşmesi%20İhlallerinin%20Önlenmesine%20İlişkin%20Eylem%20Planı.pdf>

Likewise, 61 workers and trade unionists who took action against the poor working conditions in the construction of the Istanbul Third Airport have been on trial since September 2018 for violating the law numbered 2911. Thirty-one workers and trade unionists, who were taken into custody by raiding the rooms where they were staying at the beginning of the investigation, were put on trial for about three months.

Considering the issues raised by the ECtHR in its *Oya Ataman* decision, Turkey needs to draft a new law on meetings and demonstration marches in line with the ECtHR case law.<sup>128</sup> With respect to *Oya Ataman* decision, the ECtHR determined that the violations continued and decided to implement the monitoring mechanism through the Committee of Ministers.<sup>129</sup>

#### **4.6. The General Directorate of Security's Circular titled "Audio and Video Recording" dated April 27, 2021**

Restraints to rights defenders who want to exercise their right to peaceful assembly and demonstration, which are guaranteed by the Constitution and international human rights documents, often result in violations of the ban on ill-treatment. One of the reasons why the intervention in the 700th week meeting of Saturday Mothers/People caused a great public reaction was the media coverage of the visual recordings of the ill-treatment of the demonstrators by the police.

In cases where the demonstrators or their supporters record the ill-treatment suffered during the demonstrations with their mobile phones and spread it on social media, the ill-treatment by the security forces is disclosed and the evidence in favor of the victim is strengthened in the investigations. The widespread use of cell phone video recording, which had a positive effect on the demonstrators, prompted public authorities to seek a new source for counter-actions to intimidate those exposed to ill-treatment. On April 27, 2021, the General Directorate of Security issued a circular titled "Audio and Video Recording" to all relevant units and ordered that all audio-visual recordings of police officers and civilians be prevented on the grounds that it "violates the right to privacy".

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<sup>128</sup> *Oya Ataman vs. Turkey*, Application No: 74552/01, 5.12.2006. AİHM, In this decision, the ECtHR determined that failure to notify a meeting does not justify the state's violation of the freedom of assembly, and that the authorities must show a certain degree of tolerance if the unannounced meeting and demonstration is peaceful and does not seriously threaten public order.

<sup>129</sup> For the monitoring process by the Committee of Ministers, see footnote 100.

Human rights and law organizations, which could only access the circular through the news in the press<sup>130</sup> applied to the Council of State for annulment.<sup>131</sup> When the Circular, which gives the impression that it aims to protect the “confidentiality of personal data and private life”, which is one of the fundamental rights and freedoms, is examined, it is understood that the main purpose is to prevent the disclosure of arbitrary and illegal physical interventions of the security forces towards the freedom of peaceful assembly and demonstration and to leave them unpunished. In the cases of annulment, the Council of State issued a stay of execution decision<sup>132</sup> that postponed the implementation of the Circular until the end of the case. Actions for annulment filed by various non-governmental organizations, legal organizations and bar associations are still pending before the Council of State.

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<sup>130</sup> It was not possible to reach the relevant circular on the web pages of the General Directorate of Security, and no response was received to the applications for information made by various rights organizations. The content of the circular could be accessed through the post of the Contemporary Lawyers Association's twitter account. See: <https://www.gazeteduvar.com.tr/chd-emniyetin-genelgesini-acikladi-ses-ve-goruntu-kaydi-yasak-haber-1520849>

<sup>131</sup> In the lawsuits filed, human rights and legal organizations generally rely on the following reasons for the annulment of the circular: Law enforcement officers, whose authority are determined by law, should be constantly supervised and accountable, actions taken by people who use power and authority on behalf of the public while performing their duties is open to public scrutiny, covering up the crime of ill-treatment committed during the intervention of law enforcement officers to peaceful meetings and demonstrations and hiding the crime cannot be included in the scope of right to privacy due to the obligation of public supervision indicated that it will result in compounding a felony.

<sup>132</sup> For the Stay of Execution Decision in the lawsuit filed by the Media and Legal Studies Association (MLSA), see: <https://www.mlsaturkey.com/tr/mlsanin-ses-ve-goruntu-yasagi-genelgesine-actigi-davada-yurutmenin-durdurulmasi-karari/>

## PART TWO

# METHODS OF INTERVENTION TO RIGHTS DEFENDERS

## 1. Judicial Harassment Practices

The judiciary, which protects the perpetrators responsible for the violations of human rights and freedoms with the armor of impunity and covers up the truth about the violations, tries to silence the rights defenders who speak out against the violations of rights, speak the truth and demand accountability with baseless claims and discourage the struggle for rights and freedom. The legal data in *Keep Up The Volume* reveal with concrete indicators that the judicial mechanism plays a central role in the implementation of systematic policies of stigmatization, retaliation and criminalization against rights defenders.

Since 2015-2016, there has been a pattern of judicial proceedings targeting rights defenders and an unprecedented arbitrariness in the functioning of the criminal law system. The legal data analyzed show that decisions such as taking into custody, detention and arrestation are executed without any concrete evidence, against rights defenders, rights-based non-governmental organizations, civil initiatives, solidarity groups and other organizations that come together in various forms, solely due to their lawful and legitimate advocacy activities. and prosecutions are started, and punishment/conviction decisions are made.

The hostile attitude of the judiciary towards rights defenders creates a “chilling effect”<sup>133</sup> not only on those directly affected by judicial interventions, but also on all rights defenders, causing them to avoid advocacy due to the concern/fear of similar sanctions. The unpredictable practice displayed by the judicial authorities makes it almost impossible for rights defenders to know which actions they may be held criminally responsible for and what punishment they may face. This constitutes a serious violation of legal guarantees that prohibit interpreting the scope of existing crimes to include acts that were not previously considered crimes.<sup>134</sup>

There is no doubt that the structural problems that make it possible for rights defenders to be subjected to judicial harassment have sociopolitical and ethnopolitical dimensions, and they are directly related to the democratization of Turkey and the rule of law. Structural problems that create and constantly reproduce the mentality of

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<sup>133</sup> Laurent Pech, *The Concept of Chilling Effect: Its Untapped Potential to Better Protect, Democracy, The Rule of Law, and Fundamental Rights in the EU*, Open Society European Policy Institute, March 2021, p. 4.

<sup>134</sup> The assurance of “nulla poena sine lege” regulated in article 7 of the ECHR, which is not subject to derogation under article 15, is violated due to this judicial practice. See: *Del Rio Prada vs. Spain* [BD], Application No. 42740/09, 21.10.2013.

judges and prosecutors, therefore, are not just a matter of compliance/non-compliance with legislation or standards. As this is the case, the problems will not be resolved even though the necessary legal arrangements are made.

But on the other hand, it is also necessary to remind the state of its responsibilities and to demand the creation and implementation of international standards day by day, without ignoring the structural problems and their causes, the solution of which requires long-term struggle. Therefore, in this part of the study, the current problems that allow interventions on rights defenders through judicial activities will be evaluated on the basis of the independence of the judiciary, the right to a fair trial, and the right to freedom and security.

### **1.1. Lack of Judicial Independence**

According to the common approach in the principles and rules in the reference documents, it is possible for the judiciary to be independent only if it is ensured that the judges and prosecutors are not under the influence/pressure of any power when deciding on concrete events that come before them, the judiciary organs are not influenced by external powers such as the legislature and the executive branches, and also they are protected from interventions from the high-level judicial officials and other institutions.<sup>135</sup>

In Turkey, where this approach has not been adopted, the judiciary has never been independent. The governments complained about the lack of judicial independence when they were in opposition and did everything to preserve the dependent structure of the judiciary when they came to power. Although the independence of the judiciary is an ongoing problem in this respect, it is obvious that this problem has seriously worsened, especially after 2015-2016. The lack of judicial independence is one of the most fundamental factors that paves the way for the interventions to rights defenders

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<sup>135</sup> In addition to reference documents in international law such as “Council of Europe Committee of Ministers on the independence of the judiciary Recommendation No. (94)12 on the Efficiency and Role of the Independence of Judges; Consultative Council of European Judges (CCJE) Opinions Nos 1, 6, 11; European Charter on the Status of Judges (CCJE)’s Opinion on Fair Trial in Reasonable Time; Opinion No. 6 on the Trial and No. 10 Judicial Council in the Service of the Community; Venice Commission Independence of the Judicial System Part 1: Report on the Independence of Judges; the UN Basic Principles on the Independence of the Judiciary; the Bangalore Principles of Judicial Ethics, the Constitution of Turkey, according to Article 138, foresees that “Judges, they are independent in their duties; They rule according to the Constitution, the law and the law. No organ, authority, authority or person can give orders or instructions to courts and judges in the exercise of judicial power; cannot send circulars; cannot give advice or suggestions. The legislative and executive organs and the administration must comply with court decisions; These organs and the administration cannot, under any circumstances may not change the court decisions and delay their execution.”

through the judiciary.

In addition to issues that directly affect independence, such as almost complete elimination of the legal guarantees of the independence of judges and prosecutors or the unethical practices followed in matters such as recruitment, there are many indicators that reveal the increasing bias of the judiciary towards political interests. In his report on his visit to Turkey, the Council of Europe Commissioner for Human Rights stated that “especially in cases related to terrorist crimes and organized crimes, the most fundamental guarantees of a fair trial are ignored by the judiciary and the laws are applied haphazardly to lawful actions, and this situation creates a situation of legal insecurity and endangerment of the rule of law” and underlined that “the situation has reached the level of arbitrariness.”<sup>136</sup>

The state of law and confidence in the judiciary are naturally being damaged day by day. The dependent character of the judiciary comes up with new events every day. Appointments made to critical positions by the political power and its partners, and the attitudes and decisions of judges/prosecutors are increasingly the subject of public debate. The judiciary is becoming increasingly politicized and dependent. Judicial authorities are actively encouraged to disobey national and international law. While the judges who do not comply with the ECtHR and Constitutional Court’s judgements are rewarded with promotion, members of the judiciary who act in accordance with the law are punished with forced appointments, transfers and similar actions. Judges who no longer feel the need to hide their political engagement are working in the HSK, in high courts such as the Constitutional Court, the Supreme Court, and the Council of State.

#### *a) Dependent Structure of the Council of Judges and Prosecutors*

In systems based on separation of powers where political power is shared between the legislature, the executive and the judiciary, the judiciary supervises whether the legislative and executive authorities use their powers in accordance with national and international law. Qualified judicial review depends on the fact that the judiciary is independent of the institutions it oversees and that it is protected against suggestions, influences and instructions that may come from political powers, political parties, public authorities, state institutions, deputies and all kinds of people,

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<sup>136</sup> For the report prepared by the Council of Europe Commissioner for Human Rights Dunja Mijatović following the visit to Turkey on 1-5 July 2019, see: <https://rm.coe.int/avrupa-konseyi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>.

institutions and organs.

It is necessary that the boards regulating the personnel affairs of judges and prosecutors should be completely independent from state organs, should consist of members elected by the judges on the basis of merit, and there should be no politicians on the board. In Turkey, on the other hand, the admission of judges and prosecutors to the profession, appointment, transfer, temporary authorization, promotion, first class appointment, distribution of staff, decisions about those who are not found suitable to remain in the profession, disciplinary punishments, suspension from duty, and auditing and investigation of judges and prosecutors are all under the authority of HSK. The members of the HSK, which is the only board authorized to conduct investigations and prosecutions of judges and prosecutors, is appointed largely by the political power.

With the constitutional amendment made in 2017, the HSK now consists of thirteen members, none of whom are elected by judges and prosecutors. The Minister of Justice and his undersecretary who preside over the HSK are natural members of the HSK. Four members of the HSK are appointed by the President, while the remaining seven members are elected by the Grand National Assembly of Turkey by qualified majority. Elections by qualified majority practically means that seven members are determined by the AKP and MHP, which hold the majority in the Grand National Assembly of Turkey. This situation, which causes the HSK to have a structure dependent on the executive branch, also forms the basis for the judicial authorities have leeway to intervene against rights defenders.

***b) The Problem of Independence in Selection and Appointment of Judges and Prosecutors to Profession***

The *de jure* and *de facto* independence of the judiciary is possible by acting in accordance with the rule of law in general, and by establishing mechanisms that will protect judges/prosecutors from pressure and interference, and by making these mechanisms work effectively. These mechanisms should be structured to include the necessary measures to protect the members of the judiciary from inappropriate external influences in matters such as appointment, promotion, transfer, term of office, place of duty, retirement, salary, and disciplinary actions, and should be structured in such a way that they can be implemented in practice.<sup>137</sup>

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<sup>137</sup> UN Human Rights Committee, *General Comment No. 32*, 23 August 2007, CCPR/C/GC/32, <https://www.esithaklar.org/wp-content/uploads/2021/02/insan-haklari-komitesi-gn.-Yorum-32.pdf>.

The Venice Commission states that in order for a tribunal to be considered independent, it must have security against internal and external pressures and interferences in the way its members are appointed, their terms of office and similar matters. According to the Venice Commission, “all decisions regarding the professional careers of judges should be based on objective criteria, and their admission and promotion to the profession should be made on the basis of merit, which also takes into account their educational qualifications, honesty, abilities and effectiveness.”<sup>138</sup>

In Turkey, the operation of a mechanism in which the Ministry of Justice is predominant in the candidacy process of judges and prosecutors lays the groundwork for the selection and appointment criteria to be open to subjective rather than objective evaluations.<sup>139</sup> It has come to light in many cases, especially in recent years, that political tendencies, not merit, are the determining factors in election and appointment processes.<sup>140</sup> There are many problems regarding political interventions in the judiciary, from the manipulation of the examination/interview system to the selection to the profession according to political/religious tendencies, from staffing in appointments to the destruction of the legal system by unqualified judges and prosecutors.<sup>141</sup> These problems, which seriously jeopardize the independence of the judiciary, also cause judges and prosecutors to act under the influence/pressure of the executive branch in their actions against rights defenders.

<sup>138</sup> Venice Commission, Report: Independence of the Judicial System Chapter 1: Independence of Judges, Study no. 494/2008, 16 March 2010, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-tur](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-tur).

<sup>139</sup> According to Article 9 of the Law No. 2802 on Judges and Prosecutors, the number of candidates to be recruited each year is determined by the Ministry of Justice, and those who are successful in the central examination and interview are appointed to candidacy. Meeting under the chairmanship of the deputy minister to be appointed by the Minister of Justice, the Interview Board consists of a total of seven members, including the President of the Inspection Board, the General Managers of Criminal Affairs, Legal Affairs and Personnel, the Secretary General of the HSK and one member each selected from the Advisory Board of the Turkish Justice Academy. Therefore, five of the seven members of the Interview Board are directly bureaucrats of the Ministry of Justice, while the remaining two members are in close contact with the Ministry of Justice.

<sup>140</sup> For example, the public recently learned that a judge elected from the quota of the Grand National Assembly of Turkey to the HSK membership resigned from the membership of the HSK after meeting with the chairman of one of the ruling/alliance partner parties because in the examinations he supported judges from the Menzil Sect of which he was a member rather than those supported by the said party. See. Alican Uludağ, “Why Did HSK Member Hamit Kocabey Resign?”, DW, 15 October 2021, <https://www.dw.com/tr/hsk-%C3%BCyesi-hamit-kocabey-neden-istifa-etti/av-59522234>.

<sup>141</sup> See: İsmail Saymaz, “Bir Yargıtay Üyesi: Yargıda Her Tarikatın Whatsapp Grubu Var, Haremlik-Selamlık Toplantı Yapılıyor” (“A Member of the Supreme Court: Every Sect Has a Whatsapp Group in the Judiciary, Haremlik-Selamlık Meetings are Held where Men and Women Sit Separately”), HalkTV, 19 October 2021, <https://halktv.com.tr/makale/bir-yargitay-uyesi-yargida-her-tarikatin-whatsapp-grubu-var-haremlik-selamlik-topl-650668>. Regarding the issue, Minister of Justice Abdülhamit Gül made a statement saying, “There is no question of placing the sects in the judiciary.” See: <https://www.yenisafak.com/gundem/abdulhamit-gul-tarikatlarin-yargida-yapilanmasi-soz-konusu-degil-3708903>.

### ***c) Instrumentalization of the Judiciary for Political Purposes***

It is clear that the judiciary, which has surrendered to political manipulation more than ever before in recent years, has become an extension of the political power that wants to regress the human rights struggle due to its dependent structure open to manipulation and has turned into a tool of oppression. As stated in the EU progress assessment report of 2021, there has been a tremendous regression in democracy, rule of law, independence of the judiciary, democracy and fundamental rights in recent years, and the judiciary has lost its existing foundations of independence through legal and de facto interventions by the executive and legislative branches, making it purely political. exposed to influences.<sup>142</sup>

It is possible to see that the judicial authorities act with political motives in order to silence the rights defenders by looking at the timing or speed of the steps taken in the files examined. In this context, the judicial repression system operates mainly on two lines: The first is the attitude of the judiciary in acute situations in general, and the second is about the intermediary position in more planned and programmed silencing policies. These two strategies are actually used together/nested and applied always/continuously. However, depending on the political dynamics, one of them comes to the fore in some periods, and the other in others.

In the former, we see an application where judicial proceedings are implemented very quickly. However, it is known that the judiciary actually works at a snail's pace in Turkey. But if there is a political voice that needs to be silenced immediately, the button is quickly pressed and the judiciary steps in with unusual speed. The trial and punishment of TTB members for their statements is one of the best examples of this rapid intervention of the judiciary against rights defenders.

#### **Turkish Medical Association (TTB)**

The oppression on the TTB started on January 20, 2018, during the "Operation Olive Branch" organized by the Turkish Armed Forces, claiming that national security was under threat. Marches protesting the operation were banned, and those who shared their dissident views on social media were detained. TTB Central Council made a statement titled "War is a Public Health Issue" on January 24, 2018. Just four days later, on January 28, 2018, the Ministry of Interior announced that a criminal complaint

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<sup>142</sup> European Commission, *2021 Turkey Report, Chapter 23: Judiciary and Fundamental Rights*, 19 October 2021, [https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en).

would be filed against the members of the TTB Central Council to the Ankara Chief Public Prosecutor's Office due to this statement. The day after this statement, in which the executive branch openly directed the judiciary, the Ankara Chief Public Prosecutor's Office launched an investigation against 11 physicians who were members of the TTB Central Council. The eleven physicians, who were members of the Central Council, were detained in an operation carried out in seven different cities on January 30, 2018.<sup>143</sup> According to the indictment dated 1 October 2018, 11 physicians were charged with "making propaganda for a terrorist organization" and "explicitly provoking the public to hatred and hostility". The trial held at Ankara 32nd High Criminal Court was rapidly concluded in three hearings, and on May 3, 2019, 11 former Central Council members were sentenced to 10 months imprisonment twice, on charges of "provoking the public to hatred and hostility".

The second strategy follows a slightly different route. In this route, all kinds of unlawful interventions are knitted slowly and in a planned manner by a network that also includes the judiciary. Within the scope of this plan and program, secret investigations are opened against rights defenders without any suspicion of crime, and technical follow-up decisions are implemented completely arbitrarily. With this practice, which violates the right to privacy, phone conversations are recorded and photographs are taken for years without the knowledge of the rights defender. These data, obtained through illegal means, are used years later by presenting them as evidence showing a crime. The records are sometimes manipulated, and sometimes indictments based on unfounded inferences/assumptions are prepared without even contemplating it. The files are downloaded from the shelf where it is kept on hold whenever it is decided to silence the rights defender. A defamatory press campaign is immediately launched, accompanied by targeted statements by public officials.

### **Osman Kavala**

Osman Kavala, a businessman who has been involved in civil society activities in a wide variety of fields such as human rights, culture and art, is being held in pre-trial detention within the scope of the criminal cases, which were opened on different dates and later merged together, for alleged involvement in the Gezi Park protests in 2013 and the coup

<sup>143</sup> Eleven rights defenders detained: Prof. Dr. Mehmet Rasit Tükel, Prof. Dr. Taner Gören (Istanbul), Dr. Hande Arpat, Prof. Dr. Sinan Adiyaman, Dr. Mehmet Sezai Berber, Dr. Selma Gungor (Ankara), Dr. Bülent Nazım Yılmaz (Eskişehir), Dr. Funda Barlık Obuz (Izmir), Dr. Dursun Yaşar Ulutaş (Adana), Dr. Ayfer Khorasan (Van), Dr. Seyhmus Gokalp (Diyarbakir).

attempt on 15 July 2016. Kavala's detention period, spanning one year and four months, when he was held in prison without an indictment against him, has been extended after the indictments and he has been in prison for nearly four and a half years as of the preparation of this study. Decisions regarding Kavala's arrest in the absence of reasonable doubt and his continuation of his detention are not based on information, facts or concrete evidence demonstrating his involvement in the crime. Kavala became aware of the allegations with respect to Gezi Park protests when he was arrested four years after the investigation opened against him. Within the scope of this secret investigation opened in 2013, he learned that his phone calls regarding his private and professional life were tapped and followed. Although no new evidence was collected, it took five and a half years for this investigation to turn into a case. More than a year after the coup attempt, which caused him to face criminal charges, it was decided to arrest him. In addition, both accusations were made in the three months after the two speeches<sup>144</sup> in which he was targeted by the President, and the content of these speeches and the indictments overlap to a large extent. For these reasons, the ECtHR ruled that Kavala was arrested in order to be silenced as a rights defender, and in this way, it was intended to create a chilling effect for all rights defenders.<sup>145</sup>

## 1.2. Elimination of Procedural Guarantees

The purpose of criminal proceedings is to reveal the material truth regarding an allegation of crime, without relying on assumptions, as a result of a trial conducted with concrete evidence in accordance with the law and in compliance with procedural safeguards. Procedural guarantees are a set of principles that must be followed in order to conduct a fair trial. In order to fulfil the guarantees, the accused should be tried by an independent and impartial court in accordance with basic principles such as the presumption of innocence and the principle of equality of arms, and by creating conditions suitable for him to express his intention in a public, uninterrupted and face-to-face proceeding.

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<sup>144</sup> In a statement about Kavala on November 21, 2018, President Erdoğan said, "A person who financed the terrorists during the Gezi events is locked down right now. Behind him is the famous Hungarian Jew Soros. This man is a wealthy man who commissions someone to divide nations in the world. This man, who inherited wealth from his father, is the one who gave all kinds of support to the terrorist acts that split and divided Turkey." Also, on December 3, 2018, he said "I explained who is behind Gezi. I said the pillar outside is Soros and the pillar inside is Kavala. It is clear who sent money to Kavala."

<sup>145</sup> *Kavala vs. Türkiye*, Application No. 28749/18, 10.12.2019.

In the files examined, it is seen that the procedural guarantees required by the right to a fair trial are almost completely eliminated in the judicial proceedings regarding rights defenders. Judicial authorities, displaying a practice that is diametrically opposed to the case-law of the ECtHR regarding the procedural guarantees within the scope of the right to a fair trial, conduct proceedings and take decisions that will undermine the guarantee of a fair trial for rights defenders. In addition to indispensable elements of the right to a fair trial, such as adversarial trial, the principle of equality of arms, the presumption of innocence, and the obligation of a decision with justification, there is a widespread practice of trial in which the rights of defense are disregarded for rights defenders.

#### *a) Criminalizing Legal and Legitimate Actions*

The most obvious common allegation rights defenders face is accusations for their non-criminal actions such as making statements, publishing reports and books, holding interviews, organizing and participating in workshops, conferences and training events that are all within the scope of advocacy. As a reflection of an ongoing problem in the criminal law system, instead of going from the evidence to the criminal, a presumed criminal intent is attributed to the person who is intended to be considered a suspect, and the lawful acts are interpreted maliciously and used as evidence in order to prove the intention to commit a crime is a common practice for rights defenders.

In some of the case files examined, it is possible to see that interviews, news or social media posts related to these, which were not sanctioned by the Radio and Television Supreme Council (RTÜK) at the time they were broadcast in the news channels and that the Press Prosecutor's Office did not initiate an investigation, were used as if they were criminal evidence years later. The fact that rights defenders are compelled to prove their innocence to the judicial authorities due to these actions, which should be protected within the scope of freedom of expression, and that they are put under such a burden of proof, means that the presumption of innocence is violated. The presumption of innocence requires that a person not be treated as a criminal unless there is a lawful ultimate/final court decision.<sup>146</sup> According to the case law of the

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<sup>146</sup> According to Article 38 of the Constitution and Article 6 of the ECHR, anyone accused of a crime is presumed innocent until his guilt is proven legally, and everyone has the right to learn as soon as possible the nature and cause of the accusation brought against him in a language he understands and in detail, to defend himself. He has the right to have the necessary time and facilities to prepare himself, to defend himself or to benefit from the help of a lawyer he chooses, to interrogate or have the witnesses of the claim questioned or to have the defense witnesses invited and heard under the same conditions as the witnesses of the claim.

ECtHR regarding the presumption of innocence, the judicial authorities should not act with the prejudice that the suspect/defendant has committed the alleged crime, the accused should benefit from any doubt and the burden of proof should be on the prosecution.<sup>147</sup> In addition, an appropriate causal link should be established between the evidence presented by the prosecution and the alleged crime.<sup>148</sup>

In the files examined within the scope of the research, practices where prosecutors and courts did not collect or take into account the evidence in favor of the suspect/defendant, left rights defenders with a burden of proof with almost no chance of success. In some cases, how the rights defenders on trial for organized crimes were in an organizational relationship, their place in the organizational hierarchy, the definition of their duties, the will, variety and continuity of their actions were neither revealed by the prosecutor's office nor by the court, and moreover, decisions were made regarding their punishment without doing so.



*Rights defenders give a statement to the press at İstanbul's Çağlayan Courthouse before a hearing of the trial where 11 rights defenders face terror charges, commonly known as the "Büyükada trial." February 19, 2020. Photo: Amnesty International.*

<sup>147</sup> *Barberà, Messegué and Jabardo vs. Spain*, Application No.10590/83, 06.12.1988.

<sup>148</sup> *H.M.A. vs. Spain*, Application No. 25399/94, 09.04.1996.

**Büyükada Trial**

Ten rights defenders, who were detained in a police raid on July 5, 2017 in a training workshop they attended in Istanbul Büyükada, were brought before the prosecutor's office on July 17, 2017 on charges of "committing a crime on behalf of the organization without being a member of the organization" and "membership in an armed terrorist organization". While eight of them were arrested, two of them were released on condition of judicial control. After a period of about three months, when the investigation file could not be accessed due to the confidentiality decision and smear campaigns were carried out against rights defenders, the indictment was issued, and it was seen that another rights defender was added to the suspects. Evidence presented in the vague indictment included manipulated information used in the smear campaigns in question. The only evidence put forward against many rights defenders was the recordings of telephone conversations they had in their private and professional lives. In the indictment, there was no explanation as to how these findings, which were presented as evidence, showed what crime the rights defenders had committed and how. In the judgment hearing held on July 3, 2020, the presumption of innocence, which is guaranteed under the right to a fair trial, was violated in such a serious manner that four of the rights defenders were given various prison sentences and seven were acquitted. The decisions made have not been finalized yet.

***b) Abuse of Precautionary Measures***

Precautionary measure is a legal term used for the execution of practices such as issuing a warrant, confiscation, detention, custody, implemented to preserve evidence when there is a suspicion of a crime of a certain consistency, to keep the suspect or accused ready before the competent authorities, to conduct a fair trial and, ultimately, to carry out the execution of a conviction.

All precautionary measures, by their very nature, must be implemented in accordance with certain rules, as they have consequences that limit rights and freedoms. For this reason, legal regulations include different levels of suspicion of crime, depending on the type and nature of the protection measure. For example, a reasonable suspicion is required for a search warrant, whereas a strong suspicion of guilt is required for

an arrest.<sup>149</sup> The measure must be based on a legal regulation in any case, it must be an apparently justified suspicion of crime, it must be exceptional, temporary and proportionate both at the stage of decision making and execution of the decision.<sup>150</sup>

The legal data in Keep Up The Volume reveal that none of these standards are complied with in the decisions regarding the implementation of precautionary measures against rights defenders. Particularly protection measures such as arrest, detention and custody are misused on rights defenders in an unwarranted, unnecessary and disproportionate manner. Even people whose open addresses and workplaces are known, and who can go and testify whenever they are called, are detained, their homes/offices are searched, and their non-criminal belongings are confiscated. Arrest before an indictment is prepared is a measure that should be resorted to as a last resort, but it is used in a way that has a punitive effect on rights defenders.

Decisions regarding the implementation of these measures, which necessitates serious restrictions on the right to personal security and freedom, about rights defenders almost never include a concrete case-specific justification, and are justified with stereotypical abstract reasons such as “it has been established that given the essence and qualification of the alleged crime, the upper limit of the penalties stipulated in the law for the alleged crime, the implementation of judicial control measures will be insufficient”. These statements are repeated over and over in different decisions, and the decisions seem to be written in a cut/copy/paste manner.

Confidential witness statements, the reliability of which is highly questionable, cannot be the basis for a judgment on their own can be used as the sole basis for detention decisions made about rights defenders. While the decision to arrest rights defenders is made, no effort is made to prove concretely that judicial control measures will be insufficient. The length of detention of rights defenders is also a common and serious problem. The fact that the decisions regarding the continuation of detention are automatically issued as a continuation of the previous decision without giving a new reason causes this problem to be more complicated. Another problematic aspect

<sup>149</sup> Article 19 of the Constitution, titled “Personal freedom and security”, limits the grounds for detention, and stipulates that people cannot be deprived of their liberty other than the reasons within these limits. According to the second paragraph of the same article, persons with strong indications of their guilt can only be detained by a judge’s decision in order to prevent their escape, destruction or alteration of evidence, or in other cases that make detention compulsory and are specified in the law.

<sup>150</sup> According to Article 13 of the Constitution, restrictions on fundamental rights and freedoms cannot be contrary to “the letter and spirit of the Constitution, the requirements of the democratic social order, the secular Republic and the principle of proportionality”.

is that prosecutors object to the decisions regarding the release of rights defenders and this results in their re-arrest. Until the State of Emergency Decree No. 696 dated 20 November 2017, decisions regarding detention, continuation of detention or rejection of a release request could be appealed, according to the legal regulation in the CMK. It was not possible to withdraw the arrest warrant or to appeal against the decision for release.<sup>151</sup> Despite this regulation, there have been cases from 2017 onwards, where the prosecutor's office objected to the decisions on release in practice, and those who were released were arrested again as a result of this objection being accepted.<sup>152</sup> The amendment made with the State of Emergency Decree Law No. 696 provided the practice in question with a "legal basis".

The examples in practice show that the annulment of the release orders as a result of the objections of the prosecutor's office and the re-arrest of the individuals are aimed at interfering with the decisions of the courts regarding the release of the detained persons. In such cases, the decisions for re-arrest are not taken by the courts that examine the merits of the case and therefore have full control of the file, but rather by the courts that conduct the detention review as an appeal authority as a result of the objection.

While the courts examining the merits of the case from the same file, the same charges and the same evidence decide for the person's release, another court that examines the objection makes the opposite assessment. This is a situation that eliminates the principle of legal security as well as an intervention to the main court. As seen in many examples, correspondence takes place between the court and the prisons upon the release decision of the courts, the release decision about the detainees is processed, the people are brought before another court and arrested again just before they are released.

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<sup>151</sup> The second paragraph of Article 101 of the Code of Criminal Procedure (CMK) regulates "decisions regarding the arrest, the continuation of the detention or the rejection of a request for release", while the fifth paragraph of the same article foresees that an appeal can be made against the decisions listed in the second paragraph. In the second paragraph of Article 104 of the CMK, it is regulated that appeal can only be made against the decisions regarding the rejection of the release of the suspect or the accused. With the State of Emergency Decree dated 20 November 2017 and numbered 696, the expression "rejection decision" in this regulation was changed to "these decisions".

<sup>152</sup> The first known examples of this practice were HDP detainees İdris Baluken and Ferhat Encü. İdris Baluken, who was released on January 30, 2017, and Ferhat Encü, who was released on February 15, 2017, were arrested again by the courts, which evaluated the objection as a result of the objection made by the prosecutor's office against the release decision.

### **Progressive Lawyers Association (ÇHD) Lawyers**

There are two major lawsuits against ÇHD lawyers. In the first case initiated in 2013, 22 lawyers are on trial. The second trial started with the detention of 16 lawyers in 2017, just two days before the hearing of the case in which Gülmen and Özakça were held in pre-trial detention. Fifteen lawyers were arrested after an eight-day detention on lawyers who go in and out of courthouses and police stations every day. After the President's targeting statements,<sup>153</sup> two more lawyers were detained and arrested five days and approximately one month later respectively, and the number of detained lawyers rose to 17. The first hearing of the case brought against 20 lawyers, 17 of whom were imprisoned, was held one year after the arrests. At the end of the five-day hearing, the court unanimously decided to release the detained lawyers. That same night, the prosecutor objected to the release decision. Not even 24 hours had passed yet, the same court accepted this objection and unanimously decided to re-arrest 12 of the lawyers they had released. Upon these developments, the panel of judges in charge of the trial was changed. At the end of the trial process, which was full of violations of the right to a fair trial, lawyers were given sentences of up to 159 years in total. The Supreme Court disregarded these rights violations in the file and ruled that the decision should be reversed only for three lawyers. The second case against Selçuk Kozağaçlı and Barkın Timtik, which started to be heard again after the Supreme Court's reversal decision, was merged with the first lawsuit filed in 2013, and both lawyers were detained in merged this case, which is still pending. Kozağaçlı has been on trial for a very long time, in custody for nearly six years.

#### ***c) Use of Unlawful Evidence***

According to the case-law of the ECtHR on the right to a fair trial, it should be ensured that all processes in the proceedings as a whole, including the way in which evidence is obtained and evaluated, are fair.<sup>154</sup> Along the same line, the Constitution defines the mandatory principle that illegally obtained findings cannot be accepted as evidence, and in the same way, it is regulated in the criminal procedure laws that the charged

<sup>153</sup> On November 3, 2017, President Erdoğan said at a rally: "Unfortunately, these extreme leftists are provoking families by exploiting them. They trick the families. We surely know who they are. Our martyr families need to disrupt this game". With these words, he was targeting the lawyers of those who lost their lives in the Soma Maden Massacre, including Selçuk Kozağaçlı. See: <https://www.sabah.com.tr/ekonomi/2017/11/03/erdogandan-somada-sehit-olan-madencilerin-ailelerine-mujde>

<sup>154</sup> *Ayetullah Ay vs. Turkey*, Application No. 29084/07 and 1191/08, 27.10.2020.

crime can only be proved with evidence obtained in accordance with the law.<sup>155</sup> Evidence obtained or evaluated in violation of these regulations is in the status of prohibited evidence.

Courts are under the obligation not to evaluate unlawful findings as evidence and not to take them as a basis when making a decision, while prosecutors and law enforcement officers are under the obligation to act in accordance with the law while collecting evidence. This obligation of the courts includes examining the legality of the evidence at every stage from the beginning of the trial and refusing to discuss the evidence that is understood to have been obtained unlawfully at the hearings. Evidence that is unlawful must not be revealed or read during the hearings and must be separated from the file and preserved elsewhere.

Despite these clear legal regulations, in most of the judicial proceedings against rights defenders, the evidence is collected illegally and evaluated unlawfully in the proceedings. There are two groups of evidence on which the accusations against rights defenders are heavily based: The first group includes HTS records, communication detection and technical tracking records, and the second group includes witness statements. There are serious illegalities in the process of obtaining and evaluating both groups of evidence.

Arbitrary and unlawful wiretapping/follow-ups about the prosecuted rights defenders, without any suspicion of crime, are often made years before the prosecution and without notice; these recordings are kept for years to create a crime, and they are manipulated or made the subject of accusations with illogical inferences and lawsuits were filed. There are even convictions against rights defenders based on this unlawful evidence, and quite biased assessments are made in the process of reaching these decisions.

The fact that prosecutors and judges who used illegal wiretaps in some cases were dismissed from the public office due to their connections with the structure called FETÖ/PYD, or even were tried and sometimes convicted for making illegal wiretaps and producing false evidence, clearly casts a shadow over the legality of the findings they obtained/evaluated.<sup>156</sup> While such an accusation against the members of the

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<sup>155</sup> In article 38/6 of the Constitution, there is a regulation that “Findings obtained illegally cannot be accepted as evidence”. In parallel with this, in article no. 217/2 of the CMK, it is stated that “the charged crime can be proved with any kind of evidence obtained in accordance with the law”. In Article 206/2-a of the CMK, it is stipulated that “The disclosure of unlawfully obtained evidence will be rejected”.

<sup>156</sup> See: <https://www.birgun.net/haber/selam-tevhid-kumpasi-davasinda-karar-20-saniga-hapis-cezasi-350177>.

judiciary involved in the collection and evaluation process should directly put the evidence within the scope of inadmissible evidence and should not be relied upon, in practice this is not the case.<sup>157</sup>

The most common illegal practice regarding witness evidence is the use of anonymous witnesses.<sup>158</sup> The institution of confidential witnesses, whose use in political cases has been the subject of heavy criticism in recent years, creates a disadvantageous situation where the right of defense is restricted for the suspect/defendant because the identity of the witness is unknown. Therefore, the suspects/defendants are deprived of the information that can test the credibility of the statements of the secret witnesses and the opportunity to prove that they have biased/unreliable features. This is also the case for the courts that conduct the proceedings in cases where the investigative authorities listen to confidential witnesses.

It is possible to claim that in the judicial proceedings against rights defenders, secret witnesses are not used to reveal the material fact/truth, but to punish the person who is subject to investigation/prosecution. The statements of secret witnesses are accepted as absolute truth, and the burden of proving otherwise is left to the rights defender. It is common to encounter cases where the only evidence in the files is the testimony of a secret witness. There are examples where the same anonymous witness testified in many different files about other people. Particularly in cases where there are anonymous witnesses who have not been brought before the court, serious doubts arise whether these persons actually exist. There is also plenty of data to convince an objective observer that witnesses suffer oppression.

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<sup>157</sup> In the decision of the General Assembly of the HSK dated 28 August 2016, the reason for the dismissal of the judges and prosecutors in question was “to victimize many people regardless of their innocence, to make anyone who is not themselves an enemy and to make them the target of police operations with judicial decisions, to gather intelligence, to start the execution of the decision of the senior executives of the organization according to the intelligence gathered through the police and the judiciary, to carry out a lynching attempt through the press and broadcast, to victimize many people by the judiciary regardless of whether they are perpetrators of crime or innocent, opening biased and unsubstantiated cases, creating the perception that Turkey is fighting the mafia and terrorism with these cases.” See: <https://www.hsk.gov.tr/Eklentiler/files/karar.pdf>.

<sup>158</sup> The practice of anonymous witnesses entered into force in 2008 with the amendments made to the Witness Protection Law No. 5726. However, it began to be used *de facto* in the Ergenekon cases, which were first initiated in 2007. Even before the law came into force, it came to light that Zekeriya Öz, the prosecutor of the Ergenekon investigation, had listened to Osman Yıldırım, the defendant of the attack on the Council of State, as a confidential witness. See. Pelin Ünker, “The Blind Spot of Justice: ‘If There Is No Evidence, There Is A Hidden Witness,’” 16.03.2020, DW, <https://www.dw.com/tr/adaletin-k%C3%B6r-noktas%C4%B1-delim-yoksa-gizli-tan%C4%B1k-var/a-52783892>.



*Şeyhmus Gökâlþ gives a speech on May Day at Diyarbakır's Station Square. May 1, 2015.*

### **Şeyhmus Gökâlþ**

Physician Şeyhmus Gökâlþ, a member of the TTB High Honor Board, was detained from his home along with many rights defenders in the early hours on 20 November 2020, within the scope of the investigation against the DTK, and was arrested three days later on the allegation of “being a member of a terrorist organization”. The grounds for his arrest were based on the statements of a confidential witness who was caught in 2016 and gave testimony about many people in 2019. The indictment was prepared based on the statements made by this person, whom Gökâlþ never knew and whose reliability was doubtful, and that could not be backed up with concrete evidence. While 54 pages of the 55-page long indictment were devoted to general allegations that the DTK was an illegal organization, only one page contained the accusations against Gökâlþ. Based on the statements of the confidential witness in the indictment, it was claimed that Gökâlþ attended two congresses organized by the DTK, which is a legal platform. However, Gökâlþ persistently opposed this claim. Although DTK membership could not be considered a crime, there was no evidence in the case file other than the testimony of a confidential witness that neither Gökâlþ was a member of this platform nor attended the aforementioned congresses. The anonymous witness stated that during the second hearing of the case, he did not witness that Gökâlþ was a member of an organization or engaged in any other illegal activity and that his statement was written incorrectly in the minutes. However, despite this, the prosecutor demanded the court to punish Gökâlþ in his opinion on the merits.

#### *d) Restriction of Rights of Defense*

The principle of equality of arms and adversarial procedure, which are in close relationship with each other, are the most basic guarantees protected within the scope of the right to a fair trial. The principle of equality of arms requires that the prosecution and the defense be subject to the same conditions in terms of procedural safeguards in criminal proceedings, and that each party has the opportunity to express their claims and defenses in a reasonable way without being weakened against each other.<sup>159</sup> Adversarial procedure ensures that they can mutually communicate their ideas by actively participating in the process of being informed about and commenting on the file and judicial process.<sup>160</sup>

These procedural guarantees for a fair trial are directly related to the rights of the suspect/defendant. The right to learn and defend the accusations, the right to have a lawyer, the right to hear and question witnesses, and the right to have an interpreter are the minimum rights of the suspect/defendant and are protected within the scope of the right to a fair trial. The guarantees provided for a fair trial should be compatible with the adequate and full exercise of the suspect's/defendant's rights, and these rights should be interpreted in an effective and practical way as opposed to remaining theoretical and abstract. The laws that stipulate rules on the conduct of criminal proceedings in domestic law also introduce similar regulations.<sup>161</sup>

In the examination of the judicial proceedings carried out against the rights defenders within the scope of the research, it was observed that these principles were not followed, the prosecution and the suspects/defendant were not treated equally during the trial, the prosecution was held above defense, and the rights of the suspect/defendant were not respected. In the legal data examined, practices were frequently encountered where the prosecution authorities did not collect the evidence in favor of the suspect/defendant, did not consider the favorable findings and case law, and did not evaluate the requests, statements and other evidence of the suspect/defendant.

<sup>159</sup> Constitutional Court, *Devran Duran application* [GK], Application No. 2014/10405, 25.05.2017.

<sup>160</sup> See: *Devran Duran application*.

<sup>161</sup> According to article no. 160/2 of CMK, "The public prosecutor is obliged to collect and preserve the evidence in favor and against the suspect, and to protect the rights of the suspect, through the judicial law enforcement officers under his command, in order to investigate the material truth and conduct a fair trial." According to article no. 170/4 of the CMK, "The events constituting the offense charged in the indictment are explained in relation to the available evidence; information that is not related to the events constituting the charged crime and the evidence of the crime is not included." According to article no. 170/5 of CM, "In the conclusion part of the indictment, not only the things that are against the suspect but also the things that are in his favor are put forward."

Restricting access to the file is also among the common practices, which results in a serious restriction of the suspect/defendant's ability to object to detention, especially in terms of arrestation.



Diyarbakır, 2019. Photo: Rosa Women's Association.

### **Rosa Women's Association**

The founders and members of the Rosa Women's Association were among the women's rights defenders and politicians who were detained in a simultaneous police raid in Diyarbakır on 22 May 2020. While five of the 13 association executives and members taken into custody were released the next day, eight were arrested. Two of the detainees were later released. A second operation was held on June 7, 2020, and after two more women were detained, one was given house arrest and the other an arrest warrant. On June 26, 2020, another woman was detained and arrested. As a result of the operations that came in three waves, eight women from the Rosa Women's Association were arrested on charges of "membership of an armed terrorist organization". The operations were carried out within the scope of the investigation conducted by the Diyarbakır Chief Public Prosecutor's Office, in which access to the file was restricted. The objections to the detention of women's rights defenders, who were arrested due to the restriction of access to the file, and their release requests were made without adequate knowledge of the factors underlying the accusations. The only information about what the arrested rights defenders were accused of was the questions

asked by the police in their statements taken at the police station. Among them, "What was the purpose of organizing March 8?" or "Why did you carry the Gülistan Doku banner?" There were questions related to non-criminal acts and unrelated to the accusation against which women's rights defenders were accused.

#### *e) Failure to Justify Decisions*

The right to a decision with justification, which constitutes a fundamental element of the right to a fair trial, is an important requirement of the principle of fair trial.<sup>162</sup> Judicial authorities should justify their decisions and the rationale should contain clear and understandable explanations, sufficient to enable the establishment of a cause-effect relationship as to the legal basis of the decision and the evaluation of which evidence was used. Thus, in a democratic society, both the defense and the public in general are provided with the opportunity to know the reasons for judicial decisions, as well as to effectively use their right to take legal action.

The right to a decision with a justification is also guaranteed in the Constitution and legal regulations.<sup>163</sup> According to the relevant regulations, not only the claim and the defense, but also what evidence is collected by the court and what it is based on, which evidence is rejected or accepted as superior in terms of proof during the discussion and evaluation of the evidence, moreover the reasons must be explained. In the light of all these, it is obligatory for the courts to characterize the actions of the accused which are considered to constitute a crime in a way that includes their legal elements and to show the applicable law article. This research showed that most of the decisions taken regarding rights defenders did not contain these elements and were not satisfactorily justified. Decisions made by the courts, such as indictments and arguments on merits, are based on hypothetical accusations that are completely

<sup>162</sup> *Delcourt vs. Belgium*, Application No. 2689/65, 17.01.1970.

<sup>163</sup> Article no. 141/3 of the Constitution regulates the provision "All kinds of decisions of all courts are written with justifications". In parallel, according to article no. 34/1 of CMK, "All kinds of decisions of judges and courts, including dissenting votes, are written with justifications." According to article no. 230/1 of CMK, "The following matters are indicated in the justification of the conviction sentence: (a) the views put forward by the prosecution and defense, (b) the discussion and evaluation of the evidence, the determination of the evidence that was taken as the basis of the decision and rejected, and in this context, the evidence in the file and obtained by unlawful methods is also indicated. and clearly showing, (c) the conviction reached, the deed that is found to be a crime by the accused and its characterization, taking into account the demands put forward in this regard, in accordance with the order and principles determined in Articles 61 and 62 of the TCK, at the place of conviction or next to the sentence. Determination of the security measure to be applied during the course, (d) the grounds for the postponement of the sentence, the conversion of the prison sentence to a judicial fine or one of the measures, the implementation of additional security measures, or the acceptance or rejection of the requests regarding these issues.

frivolous. Convictions are ambiguous when viewed from an objective point of view, assessments are unwarranted, inconsistent and lacking in justification. There is no detailed evaluation of the evidence in the decisions, and it is not possible to understand which conclusion was reached on what grounds.

Most of the hundreds of pages of decisions with justifications is devoted to the definition of terrorist crimes with which rights defenders are associated, or to the narratives about the establishment and functioning of these organizations, and the remainder to the opinions of the prosecution offices on the indictment and the merits. The evaluation of the evidence and the justification for the verdict sections are usually only a few pages long. Issues that were not brought forward and not discussed in the proceedings are included irrelevantly in the decisions, moreover, they are placed before/after a lengthy organizational context. It is not explained which of the defendant's actions are considered to be within the scope of which crime for which objective reasons.

### **Sevda Çelik Özbingöl**

Lawyer Sevda Çelik Özbingöl, who is a member of the Urfa Bar Association Human Rights Center and Women's Rights Commission and the İHD Urfa Branch and served as the former co-chair of the Peoples' Democratic Party Urfa, was arrested after she was detained with 11 lawyers during an operation in three provinces on 12 March 2020. In the fourth hearing of the case, held on 11 December 2020, it was decided to release Özbingöl, who had been detained for nine months, on the condition of a ban on leaving the country and judicial control. At the sixth hearing held on April 6, 2021, the prosecutor gave his opinion on the merits and demanded that Özbingöl be convicted. In the judgment hearing on June 7, 2021, the court sentenced Özbingöl to 11 years, and six months adding six years and six months on the charge of "membership in an armed terrorist organization", one year and three months on "opposition to law no. 2911" and one year and three months on "making propaganda for a terrorist organization". The meetings and demonstrations that Özbingöl participated between 2013 and 2017, the meetings she had with her clients and some association memberships, as well as two confidential witness statements, of which one was later retracted, were cited as evidence without giving any explanation as to why they constituted a crime. Apart from these abstract allegations, very general definitions were used in the opinion and decision stage, which did not contain concrete evidence, and no justification was given to show that she had committed a crime.

### *f) Concealing Important Documents from the Defense*

When the court does not give a copy of the documents held by the prosecution to the defense or does not give it in a timely manner, thus putting the defense at a disadvantaged position in responding to the allegations, it means that the contentious trial guarantee provided by the right to a fair trial and the right of defense are violated. During the trial, the parties should be made aware of all evidence presented and all arguments presented and should be given the opportunity to challenge their veracity or oppose their use. On the other hand, it was observed that in some judicial processes some important documents in the file were concealed/hidden from the rights defenders in the trial processes.



*Gezi Park.*

### **Gezi Trial**

In the Gezi Trial, which started to be heard again after the reversal decision of the Supreme Court of Appeals, it was understood that some of the statements of the witness M.P., which raised serious doubts in terms of their, were not included in the file and concealed in a way so that the defense could not reach them. This concealment was understood after the reversal decision of the Court of Cassation when the Çarşı Case and the case where Osman Kavala was tried for alleged involvement in the July 15 coup attempt were retried and the merged case was going on from the correspondence between the Istanbul 30th High Criminal Court and the Istanbul Chief Public Prosecutor's Office. The court wrote a warrant to the Istanbul Chief Public Prosecutor's Office on 17 December 2019, stating that only six pages of the 12-page statement of the witness M.P. in the Istanbul Chief Public

Prosecutor's Office was filed to the court and asked for the full statement. In response to this warrant, the prosecutor's office responded that the statement report in question was not available at the prosecutor's office. Despite these official correspondences, it was seen that the minutes of this statement was included in the case file without any cover letter. It was not possible to understand by whom, when and how it was sent. In this process, the access of the defense to this statement, which formed the basis of the trial, was blocked, thus creating a seriously disadvantageous situation.

### **1.3. Non-Implementation of ECtHR and Constitutional Court Judgements**

Thorbjørn Jagland, Spokesperson of the Secretariat General of the Council of Europe, made a statement specifically on Turkey on 1 March 2017 on the occasion of the visit of the then Minister of Justice Bekir Bozdağ, and invited Turkey to take decisions in accordance with the standards established by the case-law of the ECtHR and ECHR in relation to a number of victims of rights violations, including those pertaining to journalists and institutions that have been closed down. Jagland stated that if the national courts do not issue decisions in accordance with the aforementioned standards in domestic proceedings and the Constitutional Court does not rapidly evaluate the domestic court decisions in a timely manner, ECHR will criticize whether there is an effective domestic remedy and in this case, ECHR can evaluate the applications made directly in the presence of its own entity.<sup>164</sup> However, the performance of the courts in Turkey in complying with the standards of the ECtHR has not progressed since then and continued to deteriorate day by day instead. The courts not only did not apply the case law of the ECtHR regarding similar cases in their decisions, but also came to the point of not applying the decisions of the ECtHR regarding the same case. The resistance to the implementation of the ECtHR decision regarding Osman Kavala requiring his release has been the best recent example of this situation for rights defenders. It took a long time for the judgement of the Constitutional Court to set a precedent in the cases of other academics based on the verdict of violation regarding the academic Füsün Üstel, who is on trial in the BAK case, and some courts resisted for a long time to implement the decision.<sup>165</sup>

<sup>164</sup> See: Press statement by Secretary General Thorbjørn Jagland on the occasion of the visit of Mr Bekir Bozdağ, Minister of Justice of Turkey, Secretary General, Strasbourg.

<sup>165</sup> One of the most striking examples of the general trial courts' refusal to implement the Constitutional Court's judgements is the outright rejection of the implementation of the Constitutional Court's judgement stating that the detention of academician and writer Mehmet Altan constitutes a violation of rights and that he should be released. For this reason, Altan was released five months after this decision.

Mehmet Uçum, Deputy Chairman of the Presidential Legal Policy Board and Chief Advisor to the President, made the controversial “The judgements of the ECtHR and the Constitutional Court are not hierarchical, but are guiding control. The judgements of the ECtHR and the Constitutional Court are binding on the reconsideration of the files. Courts have to re-examine the case. However, when the courts review the decisions, they may or may not make a new judgment.”<sup>166</sup> Because, according to Article 46 of the ECHR, “States that are party to the ECHR undertake to comply with the final decisions of the ECtHR in cases to which they are parties.” The decisions of the ECtHR are binding on all state organs. There is no exception or discretion in this matter.<sup>167</sup>

## 2. Administrative Harassment Practices

One dimension of the interventions aimed at shrinking the civic space and silencing rights defenders is the decisions of public authorities. The data analyzed in *Keep The Volume Up* show that these interventions include arbitrary prohibition of the right to assembly and demonstration, not permitting peaceful assemblies and their dissolution by force,<sup>168</sup> imposing administrative fines on those who attend the gatherings, dismissals or changes in their place of employment, deregistration, salary deductions which reveal that the right to work is violated through disciplinary actions such as fines and dismissal from work. However, it is also common for public officials to target rights defenders and non-governmental organizations with their public speeches and statements.

<sup>166</sup> See: <https://www.dw.com/tr/aihm-kararlar%C4%B1-ba%C4%9Flay%C4%B1c%C4%B1-de%C4%9Fil-mi/a-56337180>. Referring to this statement, Judge Rıza Türmen, who has officially represented Turkey at the ECHR, said, “Those who argue that the ECHR decisions are not binding do not just say that they will not abide by the rules of the game, they also want the rules of the game to be adapted to their own views.” See: <https://t24.com.tr/yazarlar/riza-turmen/aihm-kararlari-baglayici-mi,29692>.

<sup>167</sup> State officials also have other statements that the ECtHR decisions are not binding. The ECHR stated that the detention of former HDP Co-Chair Selahattin Demirtaş was based on political reasons and ruled that he should be released. After this decision, President Erdoğan stated, “Actually, the ECtHR cannot decide to supersede and invalidate our courts.” See: <https://www.dha.com.tr/yurt/erdogan-aihm-bizim-mahkemelerimizin-yerine-gececek-sekilde-karar-veremez-/haber-1804336>.

<sup>168</sup> If peaceful assemblies are not allowed and dispersed by force, rights defenders are often ill-treated, detained and they face judicial harassment. In this case, the most frequently repeated accusations in investigations and lawsuits against rights defenders are opposition to the Law on Meetings and Demonstrations, Degrading the Turkish Nation, the State of the Republic of Turkey, the Institutions and Organs of the State (TCK article 301), Insulting the President (TCK article 299) and the Obstruction of Public Duty (TCK article 265). When it comes to the environmental struggle, rights defenders are also accused of Violation of the Freedom of Work and Labor (Article 117 of the TCK).

### **2.1. Bans on Assemblies and Activities Issued by Governorships and District Governorates, Restrictions Regarding Meeting Places**

The analyzed data indicate that the arbitrary restriction of the right to assembly and demonstration by public authorities is one of the ways to narrow the civic space and put pressure on rights defenders.

The right of assembly and demonstration, which allows individuals to come together to express and protect their common interests, is considered one of the foundations of a democratic society. This right, which is directly related to both freedom of expression and freedom of association, makes it possible to freely share their views on issues that concern all or a part of the society, and to participate effectively in decision-making processes by criticizing the government or its policies and actions. In this sense, it has an instrumental character, a special importance for rights defenders for the protection of human rights and the elimination of violations.

Since the expression of opinions is the main purpose of this right, as with freedom of expression, the right to assembly and demonstrations also covers and protects gatherings<sup>169</sup> that may disturb or anger those who oppose the ideas which are expressed and supported.

#### **a) Bans on assemblies and activities**

It is observed that after the declaration of the state of emergency, governors and district governors (local administrative chiefs) increasingly resort to the practice of issuing “prohibition of demonstration and activity” decisions.<sup>170</sup> Demonstration and activity ban decisions can be announced as a general ban in the form of banning all actions and activities for a certain period of time in the whole or in a part of the province or district, or to prevent a certain demonstration and activity from being carried out. Its scope includes outdoor activities such as rallies, public press

<sup>169</sup> In this section, the expression “gathering” is used to express different situations where more than one person comes together for a certain purpose, such as a rally, protest, demonstration, press statement, commemoration.

<sup>170</sup> For similar reactions, see: TIHV, *Blocking the street: violations of freedom of assembly and demonstration (2015-2019)*, 2021, [https://tihv.org.tr/wp-content/uploads/2021/05/Yurttaslik\\_Alani\\_Bilgi\\_Notu\\_2.pdf](https://tihv.org.tr/wp-content/uploads/2021/05/Yurttaslik_Alani_Bilgi_Notu_2.pdf); *Report of Violations of Freedoms of Expression, Assembly and Association between 1 January and 31 August 2020*, 2020, <https://tihv.org.tr/wp-content/uploads/2020/10/I%CC%87fadeToplanmaOrgutlenmeRapor.pdf>; OMCT, FIDH, İHD, *Permanent State of Emergency: Attacks on Freedom of Assembly and Demonstration in Turkey and Their Reflections on Civil Society*, July 2020, [https://www.ihd.org.tr/wp-content/uploads/2020/11/20201125\\_OBSTURKEYTURCweb.pdf](https://www.ihd.org.tr/wp-content/uploads/2020/11/20201125_OBSTURKEYTURCweb.pdf); ESHİD, *Right to Peaceful Assembly and Demonstration bulletins*. For access to the bulletins, see: <https://www.esithaklar.org/yayinlar/>

conferences, distribution of leaflets and brochures, and indoor activities such as conferences, panels, and film screenings. No valid justification is put forward in the decision to ban action and activity, and the article of the law is repeated in abstract, general terms.

In the laws<sup>171</sup> on which the governors and district governors can take the decision to ban protests and events, a time limit is imposed for the use of this authority;<sup>172</sup> however, in practice, the ban decisions are announced one after the other, thus effectively removing the right to assembly and demonstration – and the freedom of expression.<sup>173</sup> For example, according to the data regularly published by the Monitoring Association for Equal Rights, 58% of the total 104 bans announced between June and September 2021 are general bans on actions and activities, which were announced by the governors and district governors one after the other.<sup>174</sup>

The practice in the province of Van in the context of the general ban on demonstrations and activities is quite remarkable.<sup>175</sup> The first general ban was dated November 21, 2016, and the Van Governor's Office published a new general bulletin on the website one day before the expiry of the ban, which had been declared for 15 days, stating that a new general ban decision has been taken.<sup>176</sup> In the context of general action and event bans, authorities in Van consecutively announced demonstration and event bans and this practice have been going on for more than five years without interruption in Van. A similar course to the recurrent bans in Van is in question for the provinces of Hakkari, Bitlis, Elazig and Batman.<sup>177</sup>

<sup>171</sup> These ban decisions are announced on the basis of Articles 17 and 19 of the Law on Meetings and Demonstrations No. 2911 or Article 11/c of the Law No. 5442 on Provincial Administration.

<sup>172</sup> While a ban can be declared for a maximum of 15 days according to Article 11/c of the Provincial Administration Law No. 5442, this period is maximum 30 days for the prohibitions declared according to Articles 17 and 19 of the Law No. 2911 on Meetings and Demonstrations.

<sup>173</sup> Successive bans not only abolish the exercise of the right, but also renders the right to take legal action dysfunctional. In cases brought before the administrative courts against the decisions of the administrative authorities, the relevant ban expires before the first phase of the evaluation of the requests for stay of execution is completed. A new lawsuit is required for the newly announced ban.

<sup>174</sup> ESHİD, *Right to Demonstrate Peaceful Gathering Bulletin*, -, June – September 2021, [https://www.esithaklar.org/wp-content/uploads/2021/11/ESHID\\_TG\\_2021\\_Bulten2-.pdf](https://www.esithaklar.org/wp-content/uploads/2021/11/ESHID_TG_2021_Bulten2-.pdf)

<sup>175</sup> For detailed information on the general ban applied in the province of Van and the legal remedies sought by the Van Bar Association against this ban, see: ESHİD, *Podcast: Ban-Free Square 14*, <https://www.esithaklar.org/2021/06/podcast-yasaksiz-meydan-14-vanda-neler-oluyor-av-mahmut-kacan/>

<sup>176</sup> For the final ban decision announced on the date of completion of this report, see: <http://www.van.gov.tr/28012022-tarihli-yasaklama-karari>

<sup>177</sup> ESHİD, *Peaceful Assembly Right to Demonstration Bulletin*, October – December 2021, <https://www.esithaklar.org/wp-content/uploads/2022/02/%F0%9F%93%A2-Baris%CC%A7c%CC%A7il-Toplantı-ve-Go%CC%88steri-Hakki-Bu%CC%88teni-Ekim-Aralik-2021.pdf>

Among the clearest examples of the use of general bans on actions and activities covering the entire province or district to restrict civil space are the bans on demonstrations and activities that were announced to prevent gathering on the first anniversary of the vigil in Kazdağları and to support the actions for Boğaziçi University.

On the first anniversary of the vigil against the ecological destruction caused by the gold mine operator company Alamos Gold in the Kazdağları, Çanakkale Governorship declared a ban on actions and activities for seven days throughout the city.<sup>178</sup>

Boğaziçi University gatherings, which started due to Melih Bulu's appointment as the rector with a presidential decree on January 2, 2021, invited anyone who wanted to support the students against the appointment to the South Campus gate of the university on January 4, 2021, and two students were detained in this peaceful demonstration. Seventeen people who participated in the protest were detained in house raids in the morning on charges of "opposing the Law No. 2911" and "resisting the officer in charge". After that, on January 5, Boğaziçi academics started to take action. As the protests continued, the Istanbul Governor's Office declared a ban on protests and demonstrations in the districts of Beşiktaş and Sarıyer, where the campus is located.<sup>179</sup>

Judicial harassment against 18 rights defenders and an academic among the rights defender profiles in Keep Up the Volume, who are members of the METU LGBTI+ Solidarity community, is another striking example of the arbitrary use of administrative authorities' powers to restrict or ban the right peaceful demonstrations, through the implementation of bans on actions and activities.

The Ankara Governor's Office declared an indefinite ban on LGBTI+ events in the province on November 18, 2017. This ban on demonstrations was lifted as a result of the Ankara Regional Administrative Court's annulment of the Governor's decision on April 19, 2019. However, the university rector informed the METU students by e-mail on 6 May 2019, shortly before the 9th METU Pride Parade, which was planned to be held on 10 May 2019, that the activity would not be allowed based on the general ban decision announced by the Ankara Governor's Office. Although the Ankara Governor's Office's decision to ban the event was annulled by the Ankara Regional Administrative Court, the police, who the Rectorate called to the university on the day of the Pride,

<sup>178</sup> For the statement of the Governorship of Çanakkale, see: <http://www.canakkale.gov.tr/yasaklama-karari>

<sup>179</sup> For the statement of the Governorship of İstanbul, see: <http://www.istanbul.gov.tr/basin-aciklamasi2>

dispersed the students using excessive force and detained them.

It was unclear what the ban was based on. The university rector did not have a decision on the ban on demonstrations, there was an e-mail message. None of these were taken into account by the prosecutor, and a case was later brought against 18 rights defenders and an academic who were among those detained.

### **METU LGBTI+ Solidarity**

METU LGBTI+ Solidarity has been trying to achieve gender equality and fighting LGBTI+ phobia at METU since its establishment in 1996. The Pride Parade organized by METU LGBTI+ Solidarity has become a traditional symbol of the city. On November 18, 2017, Ankara Governorship declared an indefinite ban on LGBTI+ activities across the province on the grounds of “social sensitivities”, “public safety”, “protection of public health and morals” and “protection of the rights and freedoms of others”. On April 19, 2019, Ankara Regional Administrative Court annulled the decision of the Ankara Governor's Office to ban activities, on the grounds that the ban was indefinite, lacked specificity, and that the security of public activities should be ensured instead of banning them. Weeks after this decision, four days before the 9th METU Pride Parade, which was scheduled for May 10, 2019, the university rector informed METU students through an e-mail that the demonstration would not be allowed based on the general ban decision announced by the Ankara Governor's Office. The police, who entered the campus at the call of the Rectorate, attacked the students who gathered on the campus for the march on May 10, regardless of whether they were there for the march or not, with tear gas and rubber bullets. Twenty-one students including METU LGBTI+ Solidarity members and a lecturer, were detained. Those detained were subjected to ill-treatment. Some of the detained students said in their statements that they were not there to participate in the march, but because they objected to the way the police intervened. The university administration launched an administrative investigation against the students who were released late that night, rights defender students were targeted and exposed to various smear campaigns, scholarships and loans of the students who were prosecuted were cut off. The press release to be read before the first hearing of the case brought against 18 students and an academic from the detainees at the Ankara 39th Criminal Court of First Instance was blocked by the police. In the decision hearing on October 8, 2021, the students and the academic were acquitted.

### ***b) Assembly venue restrictions***

Another common practice that needs to be emphasized in the context of public authorities' bans on demonstrations and activities is the restrictions on the place of assembly. At a stage where the gathering has not yet taken place, public authorities impose restrictions for certain gathering places, either in all or a part of the province or district or a specific venue.<sup>180</sup>

The long-standing ban on Taksim Square can be given as an example to this situation. Galatasaray Square was added to the banned status of Taksim Square after the prohibition of the 700th week of sit-in of Saturday Mothers/People, one of the profiles in *Keep Up The Volume*.<sup>181</sup> Families of workers who lost their lives in work-related murders also gathered in Galatasaray Square on the first Sunday of every month for the one-hour Justice and Conscience Vigil. After the Saturday Mothers/People's 700th week meeting was blocked, the Justice and Conscience Vigil has also not been allowed. Feminist Night Parade, which has been held regularly on the night of March 8 on Istiklal Street since 2003, was not allowed in 2019 and the following years. Pride Parade, which has been held on Istiklal Avenue every year since 2003, has not been allowed since 2015. Thus, gatherings along Istiklal Avenue, starting from Taksim Square, are prohibited today.

The prohibition and limitation decisions of the public authorities discussed under this heading prevent the exercise of the right to assembly and demonstration even before

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<sup>180</sup> This practice is based on Article 6 of the Law on Meetings and Demonstrations No. 2911:

*Meeting and demonstration place and route*

Article 6 – Meetings and demonstration marches can be held anywhere within the borders of all provinces and districts, provided that the following provisions are complied with.

The place and route of meeting and demonstration marches in provinces and districts will not disturb public order and general security, will not make the daily life of citizens excessively and unbearably difficult (...) and provided that the restrictions listed in the first paragraph of Article 22 are complied with. It is determined by the highest civilian authority of the locality by taking the opinions of the district representatives and the mayors of the district and province where the route will pass, the three unions with the highest number of members, and the provincial and district representatives of the professional organizations with the status of public institutions. Considering the size, development and settlement characteristics of the province and district, more than one meeting and demonstration march places and routes can be determined.

The place and route of the determined meeting and demonstration march are announced in local newspapers and on the websites of the governorship and district governorship and announced to the public.

Changes to be made about the place and route of meetings and demonstration marches are made by the same method. These changes take effect fifteen days after the announcement.

In provinces and districts where more than one meeting and demonstration place and route are determined, the organizing committee may choose one of the places and routes determined (...) that will not disturb the public order and general security.

<sup>181</sup> In fact, Galatasaray Square was surrounded by a police barricade after the 700th week of Saturday Mothers/People's meeting, and it was kept separate/excluded from the public sphere.

any assembly takes place. While this completely obstructs the right to assembly and demonstration, it also constitutes an intervention against rights defenders who raise their voices and take action against human rights violations.

## **2.2. Not Permitting Peaceful Gatherings and Their Dispersion by Police and Gendarmerie**

In addition to the prohibition and restriction decisions discussed in the previous chapter, it is seen that public authorities do not allow such gatherings when it comes to gatherings organized by the rights defenders.

Failure to comply with the regulations of the Law No. 2911 on Meetings and Demonstrations,<sup>182</sup> which regulates the exercise of the right to assembly and demonstration, makes the gatherings “unlawful”. In this case, it is also possible for the police and gendarmerie (law enforcement) to intervene in the assembly and use force.

Data compiled in *Keep Up The Volume* shows that not permitting the gathering (and thus declaring it illegal) is one of the easiest justifications for interventions against rights defenders. In this context, the fact that the notification obligation, which is one of the most problematic issues in Turkey regarding the right to assembly and demonstration, is actually implemented as a requirement for permission mechanism in terms of rights defenders. For example, the blocking of the Saturday Mothers/ People’s 700th week meeting to on August 25, 2018 is based on the pretext of lack of notification to the police regarding the sit-in and the activities to be held after.<sup>183</sup>

The indictment stated that since the national security forces were not notified about the gathering, sit-ins and other activities to be held with the slogan “We are in the 700th Week of Saturday Mothers” in Beyoğlu on August 25, 2018, as well as the activities that are intended to be carried out during the day as a continuation of the event were prohibited. This was based on references in the Law on Meetings and Demonstrations and the Law on Provincial Administration<sup>184</sup> to protect public order, prevent crime, protect public health and morals, or the rights and freedoms of others, and it was stated that the prohibition of gatherings across the Beyoğlu district had

<sup>182</sup> For the assessment of Law No. 2911, see the above section titled “Crime of Opposition to the Law on Demonstration Meetings”.

<sup>183</sup> Istanbul Chief Prosecutor’s Office’s indictment dated 12.10.2020 and Investigation no. 2018/160920, Indictment no. 2020/19431.

<sup>184</sup> The provisions cited as the basis for the ban decision are Articles 10 and 17 of the Law on Meetings and Demonstrations, and Article 32/ç of the Law on Provincial Administration.

been demanded the authorities and this request had been accepted. The ban decision, which was issued on August 25, 2018, based on all the reasons for limitation specified in the law, just because the police were not notified, also manifests the arbitrariness of such banning decisions.

Saturday Mothers/People are asking about the fate of the disappeared for 26 years, and they are fighting to ensure that the perpetrators are found and prosecuted and that disappearances do not happen again. Saturday Mothers/People, who first gathered on 27 May 1995 in Galatasaray Square and carried out the sit-ins, have been holding peaceful meetings every week at 12:00 on Saturday since 31 January 2009, although there were interruptions,<sup>185</sup> until they were stopped on 25 August 2018. The people who gathered in Galatasaray Square for the 700th week of the sit-in protested the ban when they came together and they were violently dispersed by the police.

International human rights documents consider whether the demonstration of the march is peaceful or not and not the form of the protest as a criterion for the protection of the right to assembly and demonstration and the limitation of the right. Demonstrations that do not intend to resort to violence and do not incite violence are considered peaceful. Despite the peaceful nature of the gatherings in all of the profiles in *Keep Up The Volume*, it is seen that public authorities do not take the peaceful nature into account. The trial of lawyer Kemal Aytaç along with nine lawyers due to the first gathering of the Justice Watch which is a mass action of lawyers, is just one of these examples.

After Cumhuriyet daily's lawyers Bülent Utku, Mustafa Kemal Güngör and Akın Atalay were detained and arrested, along with other directors and writers of the newspaper, on the grounds that they were "participating in PKK/KCK and FETÖ/PDY organizations", lawyers started the watch for the Cumhuriyet daily detainees with the initiative of lawyer Kemal Aytaç. Lawyers held a Justice Watch for 85 weeks every Thursday in front of the Themis statue that is located in the atrium the Courthouse in Çağlayan. The first watch, held on April 6, 2017, was dispersed by the police upon

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<sup>185</sup> The campaign launched by the İHD in 1992 with the slogan of "Let the disappeared be found" for the forcibly disappeared turned into a major right-seeking movement in 1995 with the struggle of the Saturday Mothers/People. Saturday Mothers/People came together for the first time on 27 May 1995 in Galatasaray Square and held the first sit-in. The number of participants in the protest, which started with 15-20 people, reached thousands over time. Since August 1998, the police intervened every week with batons and pepper spray and detained those who participated in the protest. On March 13, 1999, Saturday Mothers/People announced that they were taking a break from their protests. They started meeting again in Galatasaray Square on 31 January 2009 and held a peaceful meeting every Saturday at 12:00 until the 700th week meeting (25 August 2018), which was not allowed.

the order of the prosecutor's office. Lawyers were dragged on the ground, batons were used, they were knocked down with shields, one lawyer's nose and another lawyer's leg was broken. A lawsuit was filed against 10 lawyers, including Kemal Aytaç, on the charge of "opposing the Law on Meetings and Demonstrations". The indictment included the assessment that the lawyers gathered on the stairs in front of the Themis Statue and staged a sit-in, and that this unauthorized action was dispersed by the police.<sup>186</sup> The peacefulness of the assembly was not taken into consideration in the indictment.

Looking at the profiles of rights defenders in *Keep Up The Volume*, it is possible to categorize such gatherings where the intervention against rights defenders occurs in connection with peaceful assemblies as follows:<sup>187</sup>

- Repetitive (cyclical) actions <sup>188</sup>
- Actions based on social – political agenda <sup>189</sup>
- Actions related to working life <sup>190</sup>
- Actions for the protection of nature and the environment <sup>191</sup>

All rights defenders matching these categories again faced sanctions from public authorities for participating in peaceful gatherings that were not allowed by public authorities. What is noteworthy here is that although the nature of the sanctions originating from public authorities differs, the quality of the sanction becomes heavier in matters public authorities consider to be politically sensitive.

While the issues that are considered as politically sensitive may vary according to the agenda, the assessment of whether an issue is sensitive is at the discretion of the public authorities. The profiles of rights defenders in *Keep Up The Volume* demonstrate that issues such as LGBTI+ rights, women's rights, violations of rights

<sup>186</sup> Indictment of the Istanbul Chief Public Prosecutor's Office, dated 09.01.2018, Investigation no. 2017/78886, Indictment no. 2018/818.

<sup>187</sup> The categorization adopted by Ayşen Uysal in her study, in which she analyzes the forms of protest actions in the public sphere in Turkey and the police's surveillance and suppression policies, was used for the categorization of these gatherings. Ayşen Uysal, *Sokakta Siyaset: Türkiye'de Protesto Eylemleri, Protestocular ve Polis*, İletişim, 2017, p. 40-42.

<sup>188</sup> For example, METU LGBTI+ Solidarity, Saturday Mothers/People.

<sup>189</sup> For example, Kemal Aytaç, Las Tesis activists, Istanbul Convention advocates, Mersin Women's Platform, İsmail Temel, Yıldız İdil Şen.

<sup>190</sup> For example, Başaran Aksu, Kamil Kartal, 3rd Airport workers.

<sup>191</sup> For example, Green Artvin Association, Green Gerze Platform, Water and Conscience Watch, İkizköy Akbelen defenders, Halime Şaman.

by the security forces, and political decisions openly defended by the President<sup>192</sup> are considered sensitive.

The most striking example of the arbitrariness of how this sensitivity is determined and the change in the nature of the sanction depending on determination is the experiences of the Las Tesis activists. On Sunday, December 8, 2019, the Las Tesis protest took place in Istanbul and Ankara. In both performances, the dance protest organized by the feminist organization Las Tesis in front of the Chilean Ministry of Women's Rights and Gender Equality on 25 November 2019 was carried out with the same words; but the police intervened only in Kadıköy, Istanbul. As hundreds of women gathered in Kadıköy upon the call of the Women's Councils, the police confiscated their audio equipment. Six of the women who were shouting the slogans "We will stop the murders of women" and "You will never walk alone" were detained by putting on reverse handcuffs. The detainees were charged with "opposing the law on meeting and demonstration, insulting the President and insulting state institutions" by treating the mottos of the performance as if they were slogans. In a statement, the Istanbul Governor's Office said that the words "you are the rapist, you are the murderer; the police, the judges, the state and the president" in the Turkish translation of the song constitute a crime.<sup>193</sup>



Photo: Meltem Ulusoy / csgorselarsiv.org.

<sup>192</sup> Military operations abroad or investment decisions such as mining, thermal power plant and infrastructure projects can be given as examples to this group.

<sup>193</sup> For the screenshot of the press release that cannot be accessed from the web page of the Istanbul Governorship, see: <https://twitter.com/KadinCinayeti/status/1203763744456749056?s=20&t=593qPfuXJCB4j6g7DWHfvA>. Moreover, for the news about the aforementioned press release of the Governorship of İstanbul, see: <https://www.dha.com.tr/gundem/valilikten-las-tesis-aciklamasi-1741594>

Public authorities declare that the assembly is “illegal” based on the grounds that the procedural requirements of the Law on Meetings and Demonstrations (such as no notification in advance) are not fulfilled in the vast majority of meetings organized by rights defenders or those rights defenders participate in. This makes it possible for the police and gendarmerie (law enforcement) to disperse the assembly and use force and detain those who attend the demonstration. In case the demonstration’s content is a politically sensitive issue, rights defenders are exposed to acts of police or gendarmerie that amount to disproportionate use of force, torture and ill-treatment.

Rights defenders, who are organizers or participants of “actions related to working life”, which is one of the categories mentioned above, faced an intervention of not permitting the assembly to say the least, while the Third Airport Workers, who are among the Keep Up The Volume profiles, were detained for about three months, and even though they have been release since, at the time that this report was prepared their trial was still pending. The statement in the Incident Scene Investigation Report dated 15.09.2018 kept by the Gendarmerie that reads, **“The participants in this action [the action where the workers protested the working conditions] caused some suspects to encourage a slowdown strike during the construction of the new airport, which is the most important and economically valuable asset in our country,”**<sup>194</sup> explains the difference in the attitude.

Examining the profiles of rights defenders in *Keep Up The Volume*, it is seen that the dispersal of the gathering by the disproportionate use of force by the police and gendarmerie was used by the authorities as a way of portraying rights defenders as “criminals”. For example, in the statement made by the Istanbul Governor’s Office about the Las Tesis protesters, it was mentioned above that the words “you are the rapist, you are the murderer, the police, judges, the state and the president” in the Turkish translation of the song are considered as crime. However, six women rights defenders who were taken into custody were acquitted in the lawsuit filed against them. Similarly, the 9th METU Pride Parade was dispersed by the disproportionate use of force by the police, and some of the rights defenders on trial even declared that they had been subjected to torture and ill-treatment by the police at the first hearing. The scholarships and loans of the rights defenders who were members of the METU LGBTI+ Solidarity community, who were detained at the 9th METU Pride Parade, were cut off by the Credit and Hostels Institution due to a letter from the Police.<sup>195</sup> However,

<sup>194</sup> The bold character emphasis is actually present in the Incident Scene Investigation Report dated 15.09.2018, and does not belong to the authors of this report.

<sup>195</sup> See: <https://kaosgl.org/haber/odtu-lgbtidan-kredi-ve-bursu-kesilen-ogrencilerle-dayanisma-cagrisi>

rights defenders who are members of the METU LGBTI+ Solidarity community, such as the Las Tesis activists, were acquitted as well.

Undoubtedly, the decision of non-prosecution or the acquittal of rights defenders in the investigations initiated against them, including and beyond the profiles are featured in *Keep Up The Volume*, or their acquittal as a result of the detection of rights violations by the Constitutional Court<sup>196</sup> are positive results. Decisions like these confirm that the actions and words of rights defenders that are intended to be criminalized are actually the exercise of fundamental rights and freedoms. However, these positive decisions do not set a precedent in cases of judicial harassment against rights defenders. The decision of non-prosecution or acquittal of a rights defender (and the reason for these decisions) is not taken into account in other investigations and lawsuits initiated against rights defenders in a similar situation.<sup>197</sup>

On the other hand, even in decisions of non-prosecution or acquittal for rights defenders, the judicial authorities do not take action against the public officials who have been party to the process leading to the case with their interventions or accusations. This, in turn, provides impunity for public officials. For example, the members of the METU LGBTI+ Solidarity community, who were detained and tried for the 9th METU Pride Parade, stated that they were handcuffed, beaten in a way that violated their bodily integrity, and that these were also included in the doctor's report, and the head of a student was repeatedly hit in a detention vehicle.<sup>198</sup> In face of these statements, the court was content with only advising the lawyers of rights defenders that they could file a criminal complaint.

### **2.3. Administrative Fines for Attending Peaceful Gatherings**

It is a common practice to impose administrative fines on rights defenders for

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<sup>196</sup> For example, Füsün Üstel was sentenced to one year and three months in prison for “making propaganda for a terrorist organization” in the trial where she was tried as a BAK signatory. This decision of the 32nd High Criminal Court of Istanbul became final as a result of the appeal review and Füsün Üstel began serving her prison sentence. Reviewing the applications of Füsün Üstel and nine academics, the Constitutional Court decided that the convictions violated the freedom of expression and thought. As a result of the Constitutional Court's judgement, Istanbul 32nd High Criminal Court acquitted Füsün Üstel from the allegation of “propagandizing for a terrorist organization”. See: *Zübeyde Füsün Üstel and others application* [GK], Application No. 2018/17635, 26.7.2019, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>

<sup>197</sup> It should be reminded that it took a long time to set a precedent in the cases of other academics for the violation judgement of the Constitutional Court regarding the academic Füsün Üstel, who was prosecuted in the BAK case.

<sup>198</sup> Ankara 39th Criminal Court of First Instance's file numbered 2019/805 E. and the minutes of the (first) hearing of the case dated 12.11.2019.

participating in peaceful gatherings, and this practice is often used in actions aimed at protecting nature and the environment. In particular, vigils or actions where rights defenders keep watch lead the public authorities to impose administrative fines on rights defenders based on reasons such as staying in forest areas or camping.

The successive and/or higher amounts of administrative fines compared to similar examples also aim to put economic pressure on rights defenders. Members of Water and Conscience Watch, which are among the *Keep Up The Volume* profiles, are a prominent example for rights defenders who are exposed to such economic pressure.

After it was revealed that Canadian mining company Alamos Gold had cut down about 195,000 trees, many more than what had been stated in the Environmental Impact Assessment (EIA) report, in the gold mine project in Kirazlı, located in the Kazdağları region, on July 26, 2019, the Water and Conscience Watch on the Balabanlı Hill, Kirazlı started. Before the COVID-19 pandemic, approximately 10 people were fined 150 TL per day for “overnight stay in the forest”.

After the announcement of the first COVID-19 case in Turkey, those in the watch area isolated themselves, taking into account the warnings of the Ministry of Health, and outside arrivals were stopped for precautionary purposes. Although the situation was known to the law enforcement officers, the Regional Directorate of Forestry officers demanded the members of the watch to evacuate the area, citing the decision of the Provincial Public Health Board, and an administrative fine of 70,840 TL in total, 3180 TL per person, was imposed on those who were there. In the same period, administrative fines of 800 TL were imposed on those who violated the ban due to the curfew during the religious holiday in all provinces. In the support campaign<sup>199</sup> they started in November 2020, rights defenders announced that the administrative fines imposed on them exceeded 500 thousand TL in total. Due to the administrative fines, writ of attachments were sent to the rights defenders.

The fines imposed on Mersin Women’s Platform went on incessantly since the campaign was launched in 2019 in order to “Prevent Femicides Immediately!” The penalties that have been imposed since the beginning of 2020 alone are as follows: A total of 960 TL based on the Misdemeanor Law for five women for the demonstration upon the murder of Pınar Gültekin on 21 July, 3,150 TL for 12 women who participated in the demonstration to defend the Istanbul Convention on August 5 for not complying with the Public Health Law No. 1593. On 18 August, six women were made

<sup>199</sup> For the support campaign, see: <https://fongogo.com/Project/kazdaglari-dayanisma-cagrısı>

to pay 392 TL for making or participating in unauthorized press statements, 3,469 TL for six women for opposing the Law No. 1593 on 20 March, and 12 people for opposing the Law No. 1593 on 27 March.

Mersin Women's Platform is trying to respond to this policy of intimidation with solidarity. While the Litigation Follow-up Group, which was established by volunteer lawyers, provides legal support, solidarity is shown with the members who will have financial difficulties in the processes of appealing the penalties. In the summer of 2020, only one of the fines was cancelled. A penalty of 1,150 TL for violating the Public Health Law was reduced to 789 TL. All of the penalties were transferred to the Constitutional Court. The platform has been on the watch for the Istanbul Convention since it was announced on March 20, 2021 that Turkey was withdrawing from the Convention by the Presidential decision. The sum of the fines for these actions exceeded 120,000 TL.

#### **2.4. Arbitrary Interventions on the Right to Work**

We see that among the rights defenders featured in *Keep Up The Volume* especially those working in the field of union rights are frequently faced with disciplinary actions such as changing their place of duty, administrative investigations, blotting personal records, cutting their wages, and dismissal. Such interferences with the right to work are used as a method of punishing rights defenders.

For example, Tugay Kartal, who is a Public Railways (TCDD) employee and an active member of Haydarpaşa Solidarity, was reposted as the station chief to the Izmit Station Directorate while serving as the head railway traffic officer in the TCDD I. Regional Directorate. In the lawsuit filed against the change of office, the 9th Administrative Court of Istanbul annulled the decision of the change of duty on the grounds that the public interest and service requirements were not taken into account.<sup>200</sup> The United Transport Employees' Union of KESK, explained the reason for the change of duty as Tugay Kartal's attempts to inform the public regarding the train accidents such as Pamukova and Çorlu, the Haydarpaşa Station and port projects, as well as exposing the spoils system established in the institution and mistakes made.

Pilot Bahadır Altan also lost his job twice due to his union work and public disclosure. Bahadır Altan, who started working for Turkish Airlines (THY) in 1998, was referred

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<sup>200</sup> Decision of the 9th Administrative Court of Istanbul, dated 16.12.2020 and numbered 2020/782 E., 2020/1795 K.

to the disciplinary board to be fired because of the statements he made to the press during the strike vote in 2007. Although he won the reemployment lawsuit, he was not reemployed. The process, which caused Altan to lose his job for the second time, started on February 5, 2020, when the passenger plane of Pegasus Airlines broke apart while landing at Istanbul Sabiha Gökçen Airport, and three passengers lost their lives. Bahadır Altan, who was a Pegasus employee at that time, made statements about the accident in the CNN Türk broadcast he attended. In his statements, he said that the newly built Istanbul Airport also had a share in the accident. The public heard for the first time from Bahadır Altan the role Istanbul Airport played in the accident in terms of affecting air traffic. Altan was taken off the air immediately. A short time later, he was fired by Pegasus for good cause.

During the protest process that started after Melih Bulu was appointed as the rector by a presidential decree on January 2, 2021, Boğaziçi University academics turned their backs on the rectorate building and started to hold vigil (Boğaziçi Watch). Melih Bulu was dismissed on July 15, 2021 and Naci İnci was appointed as a proxy. On July 16, İnci discharged the academic and documentary filmmaker Can Candan, who attended Boğaziçi Watch, and contributed to documenting the day-to-day memory of the protests, without seeking the opinion of the department and faculty. Classes of lecturer Feyzi Erçin, who, like Can Candan, supported Boğaziçi Solidarity and the detained and arrested students, were terminated on May 30, 2021 by the rectorate.

### *Arbitrary Purges*

The state of emergency declared in 2016 left many devastating effects in terms of fundamental rights and freedoms. One of the most important of these is the arbitrary dismissal from public posts.<sup>201</sup> The names of those dismissed were published on the lists attached to the decree laws, and as such they were branded as “terrorists”, lost their jobs, and were also barred from public service. Because of their stigmatization, they had a hard time finding work later on, and many of them were even unable to find work.

The dismissals of public officials were not based on any concrete reason, but on the grounds that they had “membership, affiliation, connections with terrorist organizations or structures, formations and groups that were determined by the National Security Council to be operating against the national security of the State”.

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<sup>201</sup> See: Amnesty International, *Turkey: No end in sight: Purged public sector workers denied a future in Turkey*, 2017, [https://www.amnesty.org.tr/public/uploads/files/GelecekKaranlikTRAmnesty\(1\).pdf](https://www.amnesty.org.tr/public/uploads/files/GelecekKaranlikTRAmnesty(1).pdf)

Tens of thousands of public officials, whose names are included in the lists attached to the Decree Laws, were dismissed from public service on the general grounds that they belonged to, affiliated with, or had contact with a terrorist organization, and without the need for any further action. Until the establishment of the State of Emergency Procedures Investigation Commission,<sup>202</sup> there was no effective mechanism judicial remedy in domestic law against these dismissals.

No individual justification or evidence was presented regarding the alleged affiliation or connection with the organizations or crimes against the expelled persons. Therefore, they could not find out the reasons for their expulsion. The dismissals were carried out on a wide scale, based on a single general justification, and among the dismissed public officials, there were teachers, academics, and doctors, including the rights defenders. Considering the dismissals in connection with their oppositional stance and the overt criticism of the government, the impression that it was arbitrary without a fair process is strengthened.

For example, 406 of 2210 academics who signed the declaration stating that “We will not be a party to this crime!” known as the “Peace Statement” in public were dismissed from public service due to SoE decree laws.<sup>203</sup>

Bülent Şık, one of the rights defenders featured in *Keep Up The Volume*, is one of the rights defenders whose position as an assistant professor at the university was terminated with the SoE Decree. Bülent Şık worked in the Ministry of Health’s five-year (2011-2016) research project (Evaluation of Environmental Factors and Their Effects on Health in Kocaeli, Antalya, Tekirdağ, Edirne, Kırklareli Provinces) before he was expelled in November 2016. When the Ministry of Health did not take any action regarding the pollution detected in the report, Şık published the results of the research in *Cumhuriyet* daily in April 2018. Following the news, an investigation was launched against Bülent Şık, with the complaint of the Ministry of Health, on charges of disclosing the secret regarding the job (TCK 258), providing prohibited information (TCK 334) and disclosing prohibited information (TCK 336). In the case brought against him, he was acquitted of the charge of “supplying the prohibited information”, and

<sup>202</sup> The State of Emergency Procedures Investigation Commission was established on January 23, 2017, but took office on May 22, 2017. See: [https://ohalkomisyonu.tccb.gov.tr/docs/OHAL\\_FaaliyetRaporu\\_2021.pdf](https://ohalkomisyonu.tccb.gov.tr/docs/OHAL_FaaliyetRaporu_2021.pdf)

<sup>203</sup> See: TIHV Academy *Academics for Peace: Report on the Current Situation, 24 August 2020*, [https://tihvakademi.org/wp-content/uploads/2020/08/BAK\\_Guncel\\_Durum\\_Raporu\\_Agustos\\_2020.pdf](https://tihvakademi.org/wp-content/uploads/2020/08/BAK_Guncel_Durum_Raporu_Agustos_2020.pdf). The applications made by the dismissed academics to the State of Emergency Procedures Investigation Commission result in a decision of rejection. For further information, see: <https://barisicinakademisyenler.net/node/314>

was sentenced to one year and three months in prison on the charge of “disclosure of information regarding the mission”. This decision was overturned by the 13th Penal Chamber of the Istanbul Regional Court of Justice, and Şık was acquitted on the grounds that the disclosed report was not a confidential document. The prosecutor objected to this acquittal decision.

Another situation showing the arbitrariness of the expulsions emerged with the publication of the Decree No. 701. In the lists published in the Official Gazette, only the registry, name, place of duty and duty of those who were dismissed were included, while in the list attached to the Decree Law No. 701, the reasons for dismissal of the civil servants working in the General Directorate of Turkish Employment Agency were written opposite their names.<sup>204</sup> These justifications, which were thought to have been forgotten to be deleted at the time of publication in the Official Gazette, were “Bylock/Security/Corporate Opinion”, “Security/School”, “Security/Institutional Opinion” and “Corporate Opinion/Social Media”.

## 2.5. Targeting

Another problem area is targeting processes, which are resorted to with motives such as creating opposing public opinion, mobilizing the judicial authorities, and putting pressure on the judicial authorities, which we can therefore define as the most “convenient” interventions against rights defenders.

The plays has a major role in targeting, but targeting processes are not carried out only through media outlets and are not limited to it. Increasingly, we also encounter public officials such as ministers, deputies, governors and heads of religious affairs targeting rights defenders and non-governmental organizations and trying to discredit them.

Targeting not only expose rights defenders to a climate of hate speech, but also violate many elements of the right to a fair trial, including the presumption of innocence. The labeling of rights defenders as “terrorists” or “sympathizers/members of a terrorist organization” due to their advocacy activities by official authorities and media organs arbitrarily widens the already problematic definition of terrorism and related crimes.

The from the training meeting on “Security measures” held in February 2020 within

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<sup>204</sup> Evrensel, “Bu sefer ihraç gerekçelerini silmeyi unutmuşlar” (“This time they forgot to delete their expulsion reason”), 08.07.2018, <https://www.evrensel.net/haber/356509/bu-sefer-ihrac-gerekcelerini-silmeyi-unutmuslar>

the scope of the “We are Izmir” project implemented by the Izmir Police Department in 2017 for the personnel working in various public institutions and organizations which was featured in the press is an example of this.<sup>205</sup> The slide in question was “How do organizations recruit members?” and the characteristics of people who are prone to be terrorists were listed as follows: “Distanced from politics, close to anarchy, without a notion of nationalism, tendency for globalism, those who do not believe in religion or those with weak beliefs, extremely sensitive to animal, human rights, environmental issues, with very open perceptions, they are activists, they spend time on social media.” As can be seen in this example, law enforcement units define rights defenders as people who are predisposed to be terrorists, and this paves the way for the unlimited and arbitrary expansion of the already unclear definition of terrorism. This is a picture worth pondering when one remembers the disproportionate force exerted by the security forces in peaceful protests.

The targeting of rights defenders by public officials is much more influential than the targeting that takes place through media outlets. Especially when it comes to targeting by people who are members of the security bureaucracy and hierarchically above the law enforcement, such as the Minister of Interior, the situation that arises can have irreparable results in many respects. If political and official authorities, such as the Minister of Interior, label rights defenders as “terrorists”, “traitors”, it is very likely that the law enforcement will act in a biased manner.<sup>206</sup> The members of HSK, which oversees the professional attitudes and behaviors of judges and prosecutors, and carries out all personnel matters including their appointment, promotion, assignment, disciplinary punishment and dismissal, are appointed by the President and the Grand National Assembly of Turkey, with the new structure changed in 2017. If we remember that both the president of the Minister of Justice and the Deputy Minister are members of the HSK, the rhetoric of the President and the Minister of Justice targeting rights defenders in the public arena is highly likely to have an effect on judges and prosecutors to feel pressure to take action.

The directors of Diyarbakır Bar Association, which has been operating since 1927, have been targeted many times, and there are already investigations and lawsuits opened against the Bar in connection with these processes. There is no doubt that some of

<sup>205</sup> See: <https://t24.com.tr/haber/izmir-emniyet-mudurlugu-nun-seminerinden-hayvan-ve-cvre-konularina-duyarli-olanlar-terorist-olmaya-yatkin,862132>

<sup>206</sup> For substantial examples on this subject, see also Report Following the 1-5 July 2019 Turkey Visit of the Council of Europe Commissioner for Human Rights Dunja Mijatović, 19 February 2020, CommDH (2020)1, <https://rm.coe.int/avrupa-konseyi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>, especially para. 151 – 152.

these are directly related to targeting by official authorities. In the context mentioned, Interior Minister Süleyman Soylu, who went to Dersim in September 2019, answered the questions of journalists, regarding the Diyarbakır Bar Association: “Whenever the terrorist organization says to speak to them, the Diyarbakır Bar Association speaks. Whenever the terrorist organization says something, take action, Diyarbakır Bar Association tries to take action.”<sup>207</sup> Then there were investigations against the Bar Association for other reasons.

Regarding the interference with the 700th week meeting of Saturday Mothers/ People to be held on August 25, 2018, Interior Minister Süleyman Soylu, in his speech at the District Governorship Course Opening Program he attended on August 27, 2018, called Saturday Mothers/People “means of legitimization for terrorist organizations”. He accused them of trying to “legitimize terrorist organizations” and “being the spokesperson for terrorist organizations”. In this speech, the Minister of Interior said, “They wanted to do their show for the 700th time, we didn’t allow it because we wanted this abuse and deception to end. Should we have turned a blind eye to the exploitation of motherhood by the terrorist organization and covering up terrorism?<sup>208</sup> In this speech, the Minister of Interior also said, “They directly act as the spokesperson for the terrorist organization, they defend it, and if they cannot do anything, they remain silent and unresponsive to their actions.” In connection with these statements, Saturday Mothers also faced various pressures and obstacles in the administrative and judicial context.

The Turkish government launched an operation to Gare in Northern Iraq on February 13, 2021, and the operation resulted in the deaths of 13 people detained by the PKK. İHD held a press conference regarding the murder of 13 people, and İHD Co-Chair Öztürk Türkdoğan stated that although they had been able to get back the previously detained soldiers and that they would be able to do so again, state officials did not meet with them. Co-Chair Öztürk Türkdoğan emphasized that the PKK was responsible for the lives of the people they were detaining, and the Chief General Staff was responsible for the consequences of carrying out a risky operation to the place where the detainees were. Following this statement, Interior Minister Süleyman Soylu targeted the İHD in his briefing at the Grand National Assembly of Turkey

<sup>207</sup> Gazete Duvar, “Süleyman Soylu Diyarbakır Barosu’nu hedef aldı” (Süleyman Soylu targets the Diyarbakır Bar Association), 7.09.2019, <https://www.gazeteduvar.com.tr/politika/2019/09/07/suleyman-soylu-diyarbakir-barosunu-hedef-aldi>

<sup>208</sup> bianet, “Soylu: Eminönü’nde Gezerken mi Kayboldular?” (Soylu: Did they get lost while strolling around Eminönü?), 27.08.2018, <https://bianet.org/bianet/insan-haklari/200226-soylu-eminonu-nde-gezerken-mi-kayboldular>

on February 16, 2021, and said, “Since 1984, the terrorist organization has carried out a massacre of 6021 civilians. Did that gruesome and damned association called İHD say a word about one of them, are you chasing after him?”<sup>209</sup> Öztürk Türkdoğan was detained on the morning of March 19, 2021, after the Minister of Interior targeted the İHD, and was released on condition of judicial control in the evening of the same day.

When Şebnem Korur Fincancı was elected as the Chairman of the Central Council for the period of 2020-2022 at the Turkish Medical Association’s (TTB) 72nd Grand Congress held on September 27, 2020, she found herself at the target of the government. AKP Chairman and President Recep Tayyip Erdogan, at his party’s group meeting on October 14, 2020, said, “Since when can those who are involved in terrorism take the lead of an important organization like the TTB? TTB and some professional organizations such as these are openly operating in violation of the Constitution. We will do as we did with establishing multiple bar associations,” targeting Fincancı and the TTB.<sup>210</sup>

Attending the opening ceremony of the Eti Maden Lithium Carbonate Production Facilities in Eskişehir, President Tayyip Erdoğan, made a speech and said, “We did not and will not allow the common concepts of humanity such as nature, environment and green be turned into operation apparatus by many marginal ones with suspected backgrounds. We will not allow our energy projects, which benefit Turkey and 83 million people, to be blocked by vandals wearing environmental masks.”<sup>211</sup>

Although there is no direct targeting, judicial harassment of critics when they criticize a public official’s statement can also be accepted as an implied targeting. For example, in the sermon of the Presidency of Religious Affairs on April 24, 2020, Ali Erbaş targeted LGBTI+s and those living with HIV and spread hate speech. İHD Ankara Branch and Ankara Bar Association filed a criminal complaint against Erbaş stating that he spread hate speech. Diyarbakir Bar Association also made a press statement.<sup>212</sup> A lawsuit was filed with the charge of “insulting a public official because of his/her

<sup>209</sup> Evrensel, “Süleyman Soylu Garê üzerinden İHD’yi hedef aldı: O İHD denilen canı çıkasıcısı dernek” (Soylu targets İHD over Gare), 16.02.2021, <https://www.evrensel.net/haber/426037/suleyman-soylu-gar-uzerinden-ihdyi-hedef-aldi-o-ihd-denilen-cani-cikasıcısı-dernek>

<sup>210</sup> Voice of America, “Erdoğan Türk Tabipleri Birliği’nin Yapısında Değişiklik İstedi” (Erdogan Demands Change in the Structure of TTB), 14.10.2020, <https://www.amerikaninsesi.com/a/cumhur-ittifaki-simdi-de-turk-tabipler-birliginin-yapisini-deistirmeye-calisiyor/5621427.html>

<sup>211</sup> Evrensel, “Erdoğan’dan doğayı savunanlara suçlama: Çevreci maskesi takmış Vandallar” (Erdogan Accuses Those Defending Nature: Vandals with the Mask of Environmentalists), 26.12.2020, <https://www.evrensel.net/haber/422142/erdogandan-dogayi-savunanlara-suclama-cevreci-maskesi-takmis-vandallar>

<sup>212</sup> For the press statement, see: <https://kaosgl.org/haber/diyarbakir-barusu-diyayet-i-kinadi>

statement of religious beliefs, thoughts and opinions” due to the press statement they made about the Ankara Bar Association administration, and the bar association executives are being tried at the Ankara 16th High Criminal Court. Diyarbakir Chief Public Prosecutor’s Office launched an investigation against the directors of the bar on April 28, 2020, due to the “Press Statement on Hate Speech by the President of Religious Affairs, Ali Erbaş, “for insulting the religious values adopted by a part of the public”, within the scope of Article 216/3 of the TPC.

### 3. Smear Campaigns and Targeting in the Media

The previous parts of the analysis focused on an investigation of interventions made by legal and administrative authorities on rights defenders and the civic sphere. This last section aims to look at the effects of recording, exposing and spreading of the threats and harassment directed at rights defenders through the as a problem that intersects these violations, as well as the importance of raising awareness on this issue in the long run.

Journalism, which entails a responsibility and claims such as staying objective, reflecting what is happening as it is and conveying the truth, is not instrumentalized for the first time at this moment in history, and similar problems have been experienced before. However, the culture of impunity, which is one of Turkey’s biggest problems, has never been more prevalent for some media organizations that we can call “privileged” or “acceptable” in the eyes of the government. The warnings and statements of professional organizations that cannot be enforced do not ensure that the “news” that are openly biased, containing hate speech and targeting ends. On the other hand, state institutions such as RTÜK and Press Advertisement Institution (BİK) use their responsibilities and powers as a means of punishment on “undesirable” media organizations instead of operating an objective evaluation mechanism.<sup>213</sup>

The process of creating internal and external enemies and destroying the common values of the society, which is the common feature of authoritarian governments, works in a similar manner in terms of truth. Even uncontested truths acknowledged by everyone can be denied. As “facts” that do not refer to evidence, science or testimonies are brought forward, when everyone’s truth is true in their own way, the first thing to lose is dialogue. This leads to the disappearance of the construction process of social truths. The government determines which truth is valid. Along

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<sup>213</sup> See: Reuters Institute, *Digital News Report 2021*, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/turkey>

with freedom of expression and the press, the recognition of crime as a crime is disappearing.

Media campaigns accompanying judicial and administrative harassment in Turkey target rights defenders, information about their fields of work and activities are deliberately distorted, people and institutions that defend rights are criminalized and stigmatized. It is seen that one purpose of such smear campaigns is to create evidence for investigations opened following the news or legal regulations or administrative audits used against rights defenders.<sup>214</sup> It is noteworthy that the smear campaigns, which are in line with the agenda of the government or groups close to the government, focus on certain names or institutions in certain periods. The campaign to defame and criminalize TTB in the pro-government media, which criticizes the government's anti-epidemic policies during the pandemic period, and the process that resulted in Turkey's withdrawal from the Istanbul Convention are two examples of this problem.

Since one of the aims of this section is to reveal how the media has been turned into a useful instrument in the pressure and harassment against rights defenders, the targeting and defamation directed at the rights defender individuals and institutions, this part is mainly based on the targeting and stigmatizing news about profiles included in *Keep Up The Volume* in the online print media throughout 2021. The period the previous sections of the report covers is between 2015 and 2021. Examples in the categories of defamation, targeting, disinformation and hate speech in the media were evaluated mainly over the last year. This approach was adopted for two reasons: Not only would any given year in this section provide sufficient data for these practices, but a wider range of dates would be beyond the scope of this study. However, in order to also ensure a holistic approach, the reflection of some important events in the media between 2015 and 2021, such as the murder of Tahir Elçi, the unlawful detention of Osman Kavala, the trial of BAK academics, and the Büyükada Trial were also examined. In addition to some other individuals and institutions included in the *Keep Up Volume Up* project, we have included the targeting and criminalization of the Tarlabası Community Center and rights defender institutions that receive funding from the Chrest Foundation, which are two important examples in this part of our analysis.

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<sup>214</sup> Journalists and rights defenders are punished through judicial mechanisms when they speak the truth. Whereas, when the right of rebuttal and lawsuit is exercised against stigmatization and defamation campaigns based on lies and falsification of facts, what public prosecutors say is considered within the scope of "freedom of expression".

### 3.1. Which media?

There is a parallel between the media organizations where these campaigns take place and the ownership structure of the media in Turkey. Today, most of the media is in the hands of business people close to the government or the government itself. Independent institutions that have survived are under enormous financial pressure and censorship.<sup>215</sup>

Six conglomerates (Dogus, Demirören, Albayrak, Ciner, Kalyon, İhlas Group) own the 40 largest media outlets. All of them are large conglomerates, all operating in many different sectors such as construction, energy, mining, banking and communications.<sup>216</sup> Some, such as Albayrak, Kalyon, İhlas and Doğuş Groups, have won major public tenders in the last few years, ranging from the third (Istanbul) airport to metro construction and neighborhood-scale urban transformation projects.

According to the “Media Ownership Monitoring Report in Turkey” prepared by bianet.org and Reporters Without Borders, the bosses of eight of the 10 most read newspapers and nine of the 10 most watched TV channels are in close contact with the government. 42% of TV viewers watch channels owned by people who are politically or economically dependent on the government. This rate is 56% for print media readers and 39% for radio listeners. There are no figures for online media audience rates, but more than half of the top 10 online media outlets belong to groups with close ties to the government.<sup>217</sup>

It is possible to categorize the 33 media organizations included in the tally we kept between January 2021 and December 2021, in terms of their relations with the current government. In one group, there are organizations such as Sabah, Takvim, CNN Türk, Kanal D, Star, Show TV, which were once described as “mainstream”, and which fell into the hands of business people and companies close to the AKP in the post-2000 period. In another group, there are nationalist newspapers and news sites such as Aydınlık, National Channel, OdaTV, Yeniçağ and Türkğün. Some of these publications seem to have organic relations with government partner parties. The third group consists of Islamist, far-right conservative publications represented by Yeni Akit, Yeni

<sup>215</sup> International Press Institute (IPI) 2020 Mission Report *Turkey's Journalists on the Ropes*, [https://www.ecpmf.eu/wp-content/uploads/2020/11/20201125\\_Turkey\\_PF\\_Mission\\_Report\\_TUR.pdf](https://www.ecpmf.eu/wp-content/uploads/2020/11/20201125_Turkey_PF_Mission_Report_TUR.pdf)

<sup>216</sup> Aslı Tunç, *Media Ownership and Financing in Turkey: Increasing Concentration and Customer Relations*, 2015, <http://platform24.org/Content/Uploads/Editor/medya1a.pdf>

<sup>217</sup> See: Media Ownership Monitor Türkiye, <https://turkey.mom-rsf.org/tr/medya-sahipleri/>

Şafak, Milat, a Haber, Turkey, Diriliş Postası and Milli Gazete. Local publications such as Sivas Haberler, Kahta News, Özgür Kocaeli and national news portals that compile and use news from other publications rather than their own content are the other two groups.

### 3.2. Periods of Intensification of Smear Campaigns

A closer look at the negative media campaigns against rights defenders reveals that attacks on certain names and institutions have increased at certain times in 2021. These periods also show parallels with the politics and policies of the government or how they want to steer their power and policies.

It is observed that media campaigns and hate speech targeting the Defenders of the Istanbul Convention, women's rights and LGBTI+ rights associations gained great momentum in the process leading up to the announcement of Turkey's withdrawal from the convention on March 20, 2021 and before Pride Week. It should be underlined that these campaigns are carried out by media organizations such as Yeni Akit, Milli Gazete and Milat, which we can define as "conservative right, Islamist and pro-government". Another rise regarding this issue is observed before 1 July 2021, when the decision to withdraw from the convention officially enters into force.

The screenshot shows the Yeni Akit news website. The main headline reads: "İstanbul Sözleşmesi'nin feshinden sonra sayıları daha da arttı! 'Feminist kaşar'lar yargılansın". Below the headline, there is a sub-headline: "İstanbul Sözleşmesi'nin feshinden sonra sahneye çıkan bir grup provokatör feminist, sosyal medya hesaplarından erkeklerle yönelik kullandıkları ahlakalmaz kin ve nefret dili ile tüm tepkileri üzerine çekti." To the right, there is a smaller article titled "KOSOVA CUMHURBAŞKANINI BÖYLE UYARDI! 'ŞURADA BİR TOKALASALIM'".

The current pressure on the TTB started after the "Olive Branch" operation, which was carried out by the Turkish Armed Forces on January 20, 2018, claiming that national security was under threat. While the marches protesting the operation were banned and those who shared their opposite views on social media were detained, the TTB Central Council made a statement titled "War is a Public Health Issue" on January 24, 2018, and TTB suddenly found itself the target of both the government and the pro-government media. The statement that ended with "No to war, peace right now" was frequently brought up and commented on by state officials, and TTB needed to issue a

second statement stating that they “reject all kinds of distortions”.

When TTB started to make statements about the pandemic after March 2020 and how the numbers of cases and deaths contradicted the government’s announcements and practices, the union was almost turned into a fixed target. Şebnem Korur Fincancı, who was elected as the TTB President in October 2020, was also the target of attacks. With things she said, as well as things she didn’t...

The screenshot shows the Akit news website. The main headline reads: "Boğaziçi'ndeki provokasyona sahip çıktılar! Terör sevici Şebnem Korur Fincancı ve feminist Butler'dan açık destek". Below the headline, there is a sub-headline: "14 bin öğrencinin okuduğu Boğaziçi Üniversitesi'nde yalnızca birkaç yüz kişinin destek verdiği ve bazı marjinal örgütlerin çektiği eylemlere, terör örgütü propagandası yapmaktan ceza alan TTB Başkanı Şebnem Korur Fincancı ve ünlü feminist kuramcı Judith Butler da destek vermek için yarı açık ders düzenleyecekler." There are also several smaller images and text snippets related to the protest and the individuals mentioned.

The Turkish Armed Forces launched an operation called Claw-Eagle 2 on February 10, 2021, in the Gare region in Northern Iraq. On February 13, 2021, 13 civilians held captive by the PKK organization for nearly five years were killed during the operation. TTB shared a condolence message regarding the civilians who lost their lives. Since the PKK organization was not condemned in the message, they were once again placed at the center of smearing and targeting campaigns.

The screenshot shows a social media post from SABAH newspaper. The main headline reads: "TTB'NİN GARA PAYLAŞIMINA ATEŞ PÜSKÜRDÜLER: UTANÇ VERİCİ, KAPATILMALI...". Below the headline, there is a sub-headline: "ACILARIN PAYLAŞIMIZ". The post includes a photo of a document and a video player. The document is a statement from TTB regarding the Gara massacre. The video player shows a news report about the Gara massacre. The post also includes a call to action: "ABONE OL" and "Google News".

Similarly, İHD also published a message expressing their sadness over the deaths. On February 16, 2021, Minister of Interior Süleyman Soylu, who took the floor to represent the government in the General Assembly of the Grand National Assembly of Turkey, made false and unjust accusations against the association, targeted the association and its executives, and used the phrase “damned and gruesome” against the İHD.

### 3.3. Other Examples

Human rights defenders are tried to be suppressed and eliminated by many different methods. Media campaigns are one of these methods, and their function is not limited to smearing, targeting and spreading disinformation. They can also be a flare to ignite pressure from the executive or the judiciary, or serve as an instrument for spreading the hate speech and targeting statements of politicians and state officials to large masses.

#### a) The Case of Tarlabaşı Community Center

The campaign for the Tarlabaşı Community Center (TTM) before and during the 2021 Pride Week sets an important example in this regard. Aiming to empower the residents of the Tarlabaşı region of Istanbul, which struggles with various deprivations due to poverty and migration problems, and to support their access to their rights and to reduce prejudices against Tarlabaşı, TTM organizes workshops on different topics, focusing on children's rights and gender equality. The smear campaign started by Milat Newspaper on June 25, 2021, continued until October 2021 in newspapers such as *Aydınlık*, *Yeni Akit*, *Kahta News*, *Doğru Haber*, *Takvim*.



The news and interviews published in the aforementioned newspapers targeted the institution and its employees with their names, carried out disinformation, contained

hate speech against LGBTI+s, stigmatized them, in short, presented a complete list of defamation against rights defenders.

The screenshot shows a news article from the website Takvim. The article is dated 25.06.2021 12:40 and was last updated at 25.06.2021 12:58. The title is "Tarlabaşı Toplum Merkezi'nden Müslüman çocuklara LGBTİ sapkınlığı ve PKK propagandası!". The article text states: "Özellikle Müslüman çocukları hedef seçen LGBTİ+'nin tuzaklarına her gün bir yenisi ekleniyor. Sinemadan dizilere, kitaplardan müziğe, kıyafetlerden sosyal medyaya her alanda eşcinsellik propagandasına rastlanan LGBT'i+yi empoze eden Tarlabaşı Toplum Merkezi çalışmalarında Suriyeli ve Türk çocuklarına sapkınlık aşıyor. 27 Haziran'da 'LGBTİ+ çocuklar' başlığıyla program hazırlayan merkez yıllardır zehir saçıyor. 8 Mart Dünya Kadınlar gününde yaptıkları yürüyüşte utanç verici müstehcen pankartlar açan ve ahlakdışı çizimleriyle tanınan C.S., merkezin kurucularından biri olarak çocuklara eğitim veriyor." Below the text is a banner image with the headline "Bir yandan LGBTİ sapkınlığı bir yandan PKK propagandası!".

Shortly after the news in question was published, TTM was subject to inspection by the Ministry of Interior. The concentration and timing of these audits on specific institutions enables us to establish a relationship between news and inspections.

### b) The Case of Tahir Elçi

The assassination of Diyarbakır Bar Association President Tahir Elçi on November 28, 2015 was committed following the weeks-long campaign of hatred and targeting that was initiated after Elçi's remarks on Tarafsız Bölge program hosted by Ahmet Hakan on CNN Türk on October 14, 2015.

After October 10 Ankara massacre, Elçi was invited to the program to express his views on the escalating terrorist acts and the future of the peace process. As it often happens to prominent figures in Kurdish politics, Elçi was bombarded with questions from the opponents asking, "Can you define PKK as a terrorist organization?"

Uygar Aktan from MHP who was one of the guests, said that they will not meet with anyone who does not say that they "definitely acknowledge and condemn PKK as a terrorist organization", that everyone should condemn PKK by defining it as a terrorist organization and distance themselves from PKK, and that those who do

not do this polarize the society.<sup>218</sup> Later, Tahir Elçi took the floor and said that “10 thousands of people died due to the war that has been going on for 40 years, and after it was seen that violence did not solve this problem, the peace process started to end the war” and added, “PKK is not a terrorist organization. PKK is an armed political movement, even if some of its actions are of a terrorist nature. It is a political movement that has political demands and has a very serious support from the society.”



Right after the program, the pro-government media targeted the Doğan Group and Ahmet Hakan on the one hand, and Tahir Elçi on the other. They urged prosecutors to take action. They supported the prosecution when an investigation was launched against Elçi for “making terrorist propaganda”.

Even the headlines after his murder implied that Elçi deserved this end. According to Star Daily, which immediately identified the murderer, Elçi did not say “PKK is a terrorist organization”, but became a victim of PKK terrorism.

Even after five years, A Haber channel presented the images from Tahir Elçi’s funeral as a “terrorist funeral” and the banner of Diyarbakır Bar Association as “PKK rags” in its broadcast dated 3 December 2020.

### c) *The Case of Osman Kavala*

The negative media campaigns about Osman Kavala, launched shortly before he was detained on 17 October 2017 and ongoing still today, are of such intensity and variety that they deserve to be the subject of an academic thesis. These news stories, which have been continuing incessantly for the last four years, serve to keep alive

<sup>218</sup> Yaman Akdeniz, Benan Molu, Kerem Altıparmak, “Tahir Elçi’nin Son İnsan Hakları Dersi: Terör Örgütü Demek Suç Değildir!” (Tahir Elçi’s Last Human Rights Lesson: It is Not a Crime to Say It is not a Terrorist Organization!), *bianet*, 6.01.2016, <https://m.bianet.org/bianet/diger/170912-tahir-elci-nin-son-insan-haklari-dersi-teror-orgutu-demek-suc-degildir>

the perception that he is guilty, as he also expressed as one of the reasons for his detention.<sup>219</sup>

The practice of targeting Kavala in the media started on September 19, 2017, exactly one month before he was taken into custody, on the news site Tek Vücut known for its ties to the government. Two articles, titled “The Curious Story of Osman Kavala” and “Osman Kavala’s Civil Network”, associated Kavala with PKK, Sedat Peker, George Soros, and his support and contributions to civil society and culture were conveyed as if they were criminal elements. Osman Kavala was detained about three weeks after the second article was published on September 29.



The “news” about Kavala throughout 2021 is full of mind-blowing examples of defamation, targeting, stigmatization, disinformation and hatred. Ulusal Kanal, Yeni Akit and Yeni Şafak lead the way in terms of the frequency of these examples. Kavala is also the most targeted rights activist by the media. The most frequently used labels about him are “Red Soros”, “Soros residue”, “fed by Soros”, “Turkey branch of Soros”, “Gezi Sponsor”, “terror financier”, “financier of Gezi vandals” and “Western puppet”. In addition to being the black box of the West, supporting the July 15 coup attempt, transferring money to PKK, supporting 104 retired admirals who wrote the Montreux Declaration on April 4, 2021, being a partner of organized crime leader Sedat Peker, he has been accused of completely inconsistent acts. The allegations against him are conveyed as if he has already been convicted with a final decision.

The name of George Soros, the founder of the Open Society Foundation and a

<sup>219</sup> Mehmet Emin İlbeyli, “Osman Kavala: Hükümet suçlu olduğum algısını canlı tutmak istiyor” (Osman Kavala: The Government wants to nourish the perception that I am guilty), *Independent Türkçe*, 9.12.2021, <https://www.indytrk.com/node/445391/r%C3%B6portaj/osman-kavala-h%C3%BCK%C3%BCmet-su%C3%A7lu-oldu%C4%9Fum-alg%C4%B1s%C4%B1n%C4%B1-canl%C4%B1-tutmak-istiyor>

business person, has been so objectified as a stigma and turned into an adjective that when talking about Soros in the news on the website dated November 30, 2021, Ulusal Kanal used lowercase letters and wrote “sorosist Kavala”.

The attacks against Kavala are being extended to all rights defenders, opposition party leaders, Anadolu Kültür, which he is the founder of, and İletişim Publishing, according to the country’s agenda. In November 2021, a decision was published in the Official Gazette, and it was announced that the assets of two companies, a foundation and 10 people were frozen on the grounds that they provided financing to PKK and ISIS. Among those included in the decision was the Canadian-based Anatolian Culture Foundation. Some news sites immediately wrote that this foundation belongs to Kavala. Thereupon, Anadolu Kültür A.Ş. had to deny the allegation on its Twitter account. Media outlets that associate Kavala’s company with terrorist financing disregarded this statement.



**ULUSAL** Anasayfa **CANLI İZLE** **CANLI DİNLE** TV Yayını ☰ Menü

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11 Mar 2021 - 23:01 - Gündem GÜNCELLEME: 28 Kas 2021 - 19:47

## İletişim Yayınları'nın Türkiye düşmanlığına yanıt: "Talat Paşa'ya saldırmak Mustafa Kemal'e saldırmaktır"

Terör tutuklususu Osman Kavala'nın kurucularından olduğu İletişim Yayınları, Türk devriminin önemli isimlerinden Talat Paşa'yı hedef alan skandal bir kitap basmaya hazırlıyor. Almanca'dan Türkçeye çevrilen kitap, "Talat Paşa-İttihatçılığın Beyni ve Soykırım Mimarı" adını taşıyor. Talat Paşa Komitesi Başkanı Hasan Korkmazcan, Türkiye karşıtı yayınlara izin verilmemesi gerektiğini vurguladı.

Among the publications about Kavala, the most astonishing one is that in the main news broadcast of Kanal D, owned by Demirören Holding, dated February 16, 2021, blurred the images of Kavala and Selahattin Demirtaş, while reporting the speech of MHP Chairman Devlet Bahçeli to the parliamentary group of his party. This is a method chosen when the image features offensive content and that image is blurred in the news. RTÜK had sentenced the same channel in a news broadcast in 2016 for violating Law No. 6112. In the news, the moment of suicide of a person was clearly shown. Law No. 6112 regulates the establishment and broadcasting services of radio and television. The addendum to Article 8 of the Law No. 6112 in 2017 states that “It cannot present the terrorist act, its perpetrators and victims in a way that will produce results that will serve the purposes of terrorism.” The blurring of Kavala’s image aims to brand him as a terrorist perpetrator in reference to this article.

#### d) The Case of the Büyükada Trial

Ten human rights defenders from different non-governmental organizations gathered in Istanbul Büyükada for a training workshop were detained in a police raid on July 5, 2017, the fifth day of the workshop. On 17 July 2020, they were brought before the prosecutor's office on charges of "committing a crime on behalf of the organization without being a member of a terrorist organization" and "membership in an armed terrorist organization". While eight out of 10 rights defenders were arrested, two were released on condition of judicial control. The indictment against them was announced about three months later. In the indictment, it was seen that another rights defender was added to the suspects. The final hearing of the case, which was heard at the Istanbul 35th High Criminal Court and sparked reactions and campaigns at the national and international level, was held on 3 July 2020. While various prison sentences were given to four rights defenders, seven rights defenders were acquitted.



The entire process was carried out as a targeting and smear campaign by the pro-government and nationalist media. An attempt was made to create the perception that the rights defenders attending the meeting in Büyükada were agents and that the hotel where the training was held was "a frequent destination for agents". Headlines such as "Agents caught in Büyükada" and "Agents' love for Büyükada" were made.

#### e) The Case of Academics for Peace

On January 11, 2016, 1128 academics from 89 universities announced in a press release that they had signed a statement titled "We Will Not Be A Party To This Crime". The declaration was a call for the end of violence against the people of the region during

the curfews declared after the start of the conflicts in the Kurdish provinces and the call for the creation of solutions for perpetual peace. The total number of signatories, together with the academics who signed to support the first group the following week, reached 2,212. Hundreds of these academics have been fired, their passports were confiscated, they have been denied employment elsewhere, they have been threatened and attacked in their locales, repeatedly summoned to the police station and targeted. Individual lawsuits were filed against them. Although most of them were acquitted after the Constitutional Court's "violation of rights" judgement, 88 percent of them were not reinstated.

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Gündem 22/11/2021 12:28

## "Barış" için değil, Euro için akademisyenler!

Türkiye'nin terörle mücadelesini hedef alan 'Barış İçin Akademisyenler' grubundan bazı kişilerin Avrupa'da dolandırıcılık yaptığı ortaya çıktı. Bir imzacı akademisyen, 'Sürgündeki Akademi' adıyla 4 milyon euro'dan fazla para toplayarak sürgünde vurgun yaptı! Paranın akbeti belirsiz...



## Hain akademisyenlere: 4 bin karşı imza

'Barış İçin Akademisyenler İnişiyatifi' adına 'Bu Suça Ortak Olmayacağız' başlığıyla yayınlanan bildiriye, üniversite dünyasından 'karşı' imza kampanyaları da geliyor. 4 grubun başlattığı kampanyalarda toplam imza sayısı 4 bini aştı.

Kaynak : Hürriyet

Ekleme : 18 Ocak 2016 06:25

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Since the publication of the statement, academics have been accused of treason and branded as traitors by some of the media. Among the accusations leveled against the academics were defending PKK, writing and signing the declaration under PKK orders, and weakening and discrediting the independence of the state. There were columnists who argued that they should be given life sentences. Academics who were expelled from universities with the SoE Decree were declared “FETO members”. The rhetoric of “so-called academics” used by the government and its partners was quickly adopted by the media close to the government.

*f) The Case of NGOs Funded by Chrest Foundation*

The issue of targeting non-governmental organizations and rights defenders receiving grants from abroad, which we have been hearing from the upper most authorities of the state for a while, peaked in the second half of 2021.

In Ekşi Sözlük, on 19 July 2021, the title of “sold out academics who glorify refugees” was opened. In the text under the title, readers were called to realize the danger, and it was claimed that the so-called intellectuals, so-called academics, who received grants and funding from think tanks abroad, opened a demographic invasion in Turkey by defending the refugee rights. Then the names of some academicians, journalists, lawyers and non-governmental organizations were listed. On the same day, the program “Five Questions and Five Answers with Kemal Can: Refugees Problem” was broadcasted on Medyascope, founded by Ruşen Çakır. Ruşen Çakır’s name was also among those listed in the title of Ekşi Sözlük.

In Medyascope’s broadcast, it was mentioned that the discourse about refugees was racist and fascist. The issue turned into a kind of anti-refugee tagging campaign, targeting media and non-governmental organizations that received foreign funding on July 21. In the news, especially the organizations that received financial aid from the Chrest Foundation, which also funds Medyascope, were mentioned, and although they disclosed their income sources in a very transparent way on their website, this situation was reported as if it were kept secret intentionally and had been revealed at that moment. Organizations that had different political stances such as Aydınlık, Yeniçağ, Yeni Şafak, Ulusal Kanal, Yeni Akit, Takvim, Oda TV, SoL were saying exactly the same thing.

## İşte hain akademisyenlerin asıl amacı

Akademisyenler tarafından imzalanan 'İhanet bildirisini' köşesine taşıyan Elif Çakır, bildiriyi ilgili çok çarpıcı tespitlerde bulundu.

Google News



2016-01-16 08:57:00 - 2016-01-16 09:09:09



After this first wave, the amendment made to the Associations Regulation on October 22, 2021 was published in the Official Gazette. It was stated by non-governmental organizations that some of the regulations introduced by this amendment would result in a serious shrinking of the civic space and restriction of the freedom of association. It is possible to say that three groups of regulations in the relevant regulation are problematic. These are international aids, the permission of convening the general assembly and the meetings of the board of directors online, and most importantly, carrying out the audits of the associations according to risk analysis by authorities.

The second targeting campaign for organizations that received funding from the Chrest Foundation took place at the end of the year. The General Directorate of Civil Society Relations, affiliated to the Ministry of Interior, announced on December 3 that an action was initiated regarding donations made from an American-based foundation to media institutions, and political and women's associations operating in Turkey, on the grounds that "it is against to domestic legislation".

In the statement, it was purported that "As a result of the inspections of the mentioned associations; It was determined that some associations acted in violation of the Law of Associations and the relevant legislation, did not fulfill the stipulated obligations, did not comply with the principles and procedures specified in the tax laws, the judicial and administrative authorities were asked to take action against the directors of the associations."

Following this announcement, the same media outlets that attacked rights defenders

began to make canonical reports. By distorting the content of the statement, it was claimed that it is illegal to receive funds from the foundation in question, and that associations and foundations evade taxes.



**g) The Case of Kaos GL following the Friday Sermon of Ali Erbaş, President of Religious Affairs**

The Friday sermon, delivered by the President of Religious Affairs Ali Erbaş on April 24, 2020, associated homosexuality and “adultery” with the pandemic and held these responsible. In terms of its importance in determining the agenda, Kaos GL analyzed how LGBTI+ related issues were handled in the national and local press and Turkish-language websites from the week Ali Erbaş gave his speech until May 20.<sup>220</sup>

According to the report, 13 news stories (62% of the news) feature Erbaş’s statements within the framework of the support given by various non-governmental organizations and the reactions to bar associations criticizing Erbaş’s statements and non-governmental organizations defending LGBTI+ rights. Kaos GL Association’s Financial Transparency Report is also the subject of the news with the headlines “Western countries funnel money to deviants in Turkey”, “Crusaders feed deviants”, “CHP supporters fund LGBTI”, and “CHP funds, LGBTI gains”. In accordance with

<sup>220</sup> İdil Engindeniz, *Diyanetin Hutbesi Medyaya Nasıl Yansdı? (How was the Religious Affairs Administration’s Friday Sermon Reflected in the Media?): 19 April - 20 May Media Monitoring Report*, Kaos GL Association, October 2020, <https://kaosgldernegi.org/images/library/diyanetin-hutbesi-2020.pdf>

the news language that Yeni Akit newspaper opts for on many subjects, insults, humiliation, distortions and discrediting the group, which is seen as a target, were used here as well. This language, in which even the most basic journalism principles are not observed, conveys the subject in a way that is as sensational as possible and arouses anger / hatred in the eye of the reader.



As one of the perpetrators of the shrinking in the field of civil society since 2015, the media not only negatively affects the targeted people and institutions with its targeting, stigmatization and smear campaigns, but also contributes to the isolation of rights defenders and the discrediting of rights advocacy and civil society in general, in terms of the breadth of its reach. It continues to open space for the government in this regard.

# PART THREE

**CONCLUSION**

**AND**

**RECOMMENDATIONS**

The special protection and support of rights defenders is guaranteed by international conventions and documents. All over the world, rights defenders are seen as indispensable elements of a democratic process that respects human rights. They have a monitoring and supervisory function against violations of rights arising from both laws and practices.

Contrary to national and international law, rights defenders are criminalized, targeted, faced with administrative or judicial pressure, detained, arrested or sentenced only because they criticize the decisions and actions of public authorities and related third parties/institutions while carrying out their legitimate activities that do not entail any element of a crime. It is unacceptable that they are subjected to harassment by the authorities.

Turkey has to put an end to policies aimed at silencing and preventing rights defenders, ensuring that the judicial system is free from all kinds of political influence, and that the erosion in the judiciary and the state-centered approach in judicial and investigation processes are ended.

In order to support the struggles of rights defenders and for a functioning democracy, rule of law and human rights:

- All necessary measures must be taken urgently to ensure the effective implementation of the Declaration on Human Rights Defenders in Turkey.
- Compliance with the principles of pluralism and respect for differences, which are the basic principles of a democratic society based on the rule of law and human rights, should be ensured.
- Freedom of expression of rights defenders and all opposition must be protected by creating a public discussion environment that will allow criticism.
- The restrictive legal regulations in the Turkish Penal Code, the Anti-Terror Law and the Law on Meetings and Demonstrations, which are the sources of interventions against rights defenders, should be harmonized with international human rights standards.
- The amendments made in the Law on Associations and the Regulation on Associations and the Law on the Prevention of the Proliferation of Weapons of Mass Destruction, as well as other legal regulations that seriously jeopardize the freedom of association, should be revoked.
- Rights defenders should not be subject to legal and administrative sanctions such as arbitrary detention, arrest, investigation and prosecution, retaliation,

## CONCLUSION AND RECOMMENDATIONS

and targeting for their legitimate and legal advocacy activities.

- Rights defenders who continue to be detained unlawfully due to their legitimate and legal advocacy activities should be released.
- The politically dependent structure of the Council of Judges and Prosecutors should be ended, and the independence and impartiality of the judiciary should be guaranteed both at the legislative level and in practice.
- All legal regulations limiting the use of the freedom of assembly and demonstration should be revoked, and the arbitrary use of the powers granted to the administrative authorities should be rescinded.
- Police officers who intervene in peaceful meetings and demonstrations by using excessive force should be prosecuted effectively and appropriately punished.
- The exposure of rights defenders to negative rhetoric, smear campaigns, stigmatization and marginalization in the media must be stopped.
- The international community and human rights bodies should continue their work on monitoring, reporting and making statements on the situation of rights defenders, and should make country visits to Turkey for these purposes.

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(Truth Justice Memory Center)

The 2015-2021 period, during which fundamental rights and freedoms were interfered with in an arbitrary manner, was marked by a hostile attitude targeting different subjects who spoke out against government policies, such as politicians, journalists, academics, trade unionists, professional groups, non-governmental organizations, activists, and rights defenders.

These unlawful and anti-democratic interventions, whose main purpose is to silence dissident voices, range from enacting new laws that will impede the activities of civil society to abusing the current legislation maliciously, from abusing administrative and judicial powers to controlling the media and organizing smear campaigns by making unfounded news with a wide repertoire.

Based on this current and urgent need, this report has been prepared in order to draw a panorama of the interventions aimed at hindering the work of rights defenders in Turkey.