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THE STATE OF TURKEY BEFORE THE PRESIDENTIAL AND PARLIAMENTARY ELECTIONS

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INTRODUCTION

Ahead of the presidential and parliamentary elections to be held in Turkey in June 2023, it is necessary to briefly describe the state of democracy and human rights in Turkey. In order to analyze the current political situation, one must briefly recall the developments in the last decade.

BACKGROUND

The Path to Authoritarianism and the Permanent State of Emergency

The peace and resolution process in Turkey, which started in March 2013 and ended in April 2015, led to significant political developments. One of the features of the parliamentary elections held in June 2015 was that the HDP (Halkların Demokratik Partisi -Peoples' Democratic Party), which is predominantly voted for by Kurdish voters, ran in the elections for the first time and received 13.6% of the popular vote, passing the high election threshold of 10%, and won 80 parliamentary seats. In this election, the AKP (Adalet ve Kalkınma Partisi – Justice and Development Party), which had been in power on its own since 2002, lost its majority.¹ When the political parties with a group in the parliament failed to reach a coalition agreement, re-elections were called. In this process, the 1 November 2015 re-elections were held under a wave of violence that deeply shook Turkish society, particularly the 20 July 2015 Suruç massacre in Şanlıurfa, the 22 July 2015 provocation of the killing of two police officers in Ceylanpınar, Şanlıurfa and the restart of armed clashes on 24 July 2015, the beginning of a period of prolonged curfews in Varto, Muş on 16 August 2015 and the armed clashes in urban centers (publicly known as the trench and barricade incidents), and the October 10 Ankara Train Station Massacre.² In this election, the AKP reached the majority it wanted. It formed the government on its own.

In May 2016, provisional Article 20 was added to the Constitution through Law No. 6718 dated 20 June 2016, abolishing parliamentary immunity. Immediately after the adoption by the Grand National Assembly of Turkey (GNAT) of the provisional Article 20 to the Constitution, AKP

¹ <https://www.osce.org/files/f/documents/1/d/179806.pdf>

² <https://www.osce.org/files/f/documents/b/4/196356.pdf>

Human Rights Association (İnsan Hakları Derneği-İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 27 branches, 7 representative offices, and ~8,000 members. İHD is the oldest and largest human rights organization in Turkey and its “sole and specific goal is to promote ‘human rights and freedoms.’”

Chairperson and Prime Minister Ahmet Davutoğlu was forced to resign as Prime Minister on 22 May 2016.³ The constitutional amendment was published in the *Official Gazette* on 6 June 2016 and entered into force.⁴

On 15 July 2016, an attempted coup d'état was staged by the Fethullah Gülen organization (FETÖ/PDY), which was organized within the state; the coup d'état was quenched on 16 July 2016 and a state of emergency (SoE) was declared in Turkey 5 days later on 21 July 2016.⁵

The SoE that was declared on 21 July 2016 on the grounds of the armed clashes that started on 24 July 2015 and the subsequent coup attempt on 15 July 2016 was lifted on 19 July 2018, while the SoE has been rendered permanent by the decree laws enacted during the SoE, particularly the SoE regime has been made permanent with the specially enacted Law No. 7145. Regarding the emergency decrees issued during the SoE in Turkey, one can consult the Venice Commission's "Opinion on Emergency Decree Laws N^os. 667-676 adopted following the failed coup attempt of 15 July 2016"⁶ as well as the Commission's "Compilation of Venice Commission Opinions and Reports on States of Emergency"⁷ of 16 April 2020. Regarding the violations of rights during the SoE in Turkey, the Human Rights Joint Platform's (HRJP) report "The State of Emergency in Turkey: Implementation and Measures,"⁸ İHD's annual reports and its special report "State of Emergency Decree Laws and their Impact on Human Rights in Turkey"⁹ can be consulted. Although the SoE was lifted on 19 July 2018, it was virtually extended for 3 years through Law No. 7145,¹⁰ which entered into force on 31 July 2018, and was extended for another year through Law No. 7333 enacted in 2021, thus, the most important SoE measures were implemented for 4 more years.

With the constitutional amendment introduced under the SoE conditions and adopted on 16 April 2017, the regime was changed, and this regime was named as the "Turkish-Type Presidential Model" or the "Presidential Cabinet." This regime is characterized by an authoritarian governance mentality. Before the constitutional amendment was submitted to the referendum, the Venice Commission visited Turkey and released its opinion report on 13 March 2017, which contained very important warnings. The Venice Commission's "Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017"¹¹ found that the principle of separation of powers was seriously undermined. In the referendum on the constitutional amendment, for the first time in Turkey, ballot papers and envelopes without the seal of the ballot box committee were accepted as valid by the decision of the Supreme Board of Elections (SBE). We, therefore, believe that the "no vote" was converted into a "yes vote" this way, and a serious suspicion arose. The OSCE observation report on the referendum can also be consulted.¹²

In Turkey, presidential and parliamentary early general elections were held under the SoE in 2018. Before the elections, the Law No. 298 on Basic Provisions of Elections and Voter Registers was

³ <https://www.resmigazete.gov.tr/eskiler/2016/05/20160522M1-1.pdf>

⁴ <https://www.resmigazete.gov.tr/eskiler/2016/06/20160608-1.htm>

⁵ <https://www.resmigazete.gov.tr/eskiler/2016/07/20160721-4.pdf>

⁶ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)037-e)

⁷ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e)

⁸ https://ihop.org.tr/wp-content/uploads/2022/06/OHAL-Raporu_-2016_2018.pdf

⁹ <https://ihd.org.tr/en/wp-content/uploads/2022/05/EmergencyDecreeLawsReport.pdf>

¹⁰ <https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency/>

¹¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)005-e)

¹² <https://www.osce.org/files/f/documents/6/2/324816.pdf>

amended in favor of the government. The constitutional amendment had already introduced important regulations in favor of the government, in particular reinforcing the government's control over the judiciary. One can consult the Venice Commission and OSCE/ODIHR's Joint Opinion "On amendments to the Electoral Legislation and Related 'Harmonization Law' adopted in March and April 2018"¹³ of 17 December 2018. Election laws were amended, and early elections were held with advantages in favor of the political power. These elections paved the way for political parties to enter the elections by forming alliances. The People's Alliance (Cumhur İttifakı) was formed by the AKP, MHP (Milliyetçi Hareket Partisi – Nationalist Movement Party) and the BBP (Büyük Birlik Partisi – Grand Union Party). The Nation's Alliance (Millet İttifakı) was formed by CHP (Cumhuriyet Halk Partisi – Republican People's Party), İYİP (İyi Party - Good Party), SP (Saadet Partisi - Felicity Party) and DP (Demokrat Parti - Democratic Party). HDP, on the other hand, entered the elections on its own with its constituent parties. OSCE's report on the early elections of June 2018 can be consulted.¹⁴

The ruling People's Alliance suffered its first serious electoral defeat in the March 2019 local government elections. In particular, the HDP's strategy of winning in the east and southeast and losing in other parts of Turkey yielded results, and with the support of HDP voters, the AKP lost metropolitan municipalities such as İstanbul and Ankara, which it had held for many years. The İHD election observation report on the local elections held in March 2019 contains serious allegations of violations.¹⁵

The authoritarian government based on a single-person rule in Turkey has tried to manage its authoritarian practices under the name of various administrative measures and with prohibition measures in violation of the Constitution when faced with the pandemic. In other words, the management of the pandemic between March 2020 and 2021 was mostly based on prohibition decisions taken by the Ministry of Interior and governorships in violation of the "principle of legality."¹⁶

Political developments in the context of the Kurdish issue and the situation of armed conflict

Significant developments have taken place because of the stalemate in the Kurdish issue and since armed clashes began on 24 July 2015. The prolonged curfews in Turkey, which started on 16 August 2015 in Varto, Muş, continued throughout 2016 and are still in force in various rural areas. According to the Human Rights Foundation of Turkey's (HRFT) report on the curfews imposed in eastern and south-eastern Anatolia covering the period between 16 August 2015 and 1 January 2020 and the annual rights violation reports of the İHD, curfews were maintained in both 2020¹⁷ and 2021.¹⁸

The Venice Commission's "Opinion on the Legal Framework governing Curfews" of 13 June 2016 on the prolonged curfews imposed in Turkey since 16 August 2015 refers to clearly unlawful practices.¹⁹

Further in August 2016, Turkey conducted a military operation between Azaz and Jarabulus in Syria

¹³ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)031-e)

¹⁴ https://www.osce.org/files/f/documents/9/4/397046_0.pdf

¹⁵ https://ihd.org.tr/en/wp-content/uploads/2019/06/31-March-Elections-Report_IHD_May-2019.pdf

¹⁶ https://www.ihd.org.tr/en/wp-content/uploads/2020/08/20200811_IHD-Kovid19TedbirleriRaporu.pdf

¹⁷ <https://ihd.org.tr/en/wp-content/uploads/2021/10/iHD-2020-Violations-Report.pdf>

¹⁸ https://ihd.org.tr/en/wp-content/uploads/2022/11/SR2022_2021-Turkey-Violations-Report.pdf

¹⁹ [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)010-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)010-e)

and took control of the area.²⁰

Especially after the attempted coup was suppressed and the SoE was declared, Turkey has regularly obtained approval from the GNAT for military interventions, which basically meant resolutions of war, in the Kurdish enclaves in northern Iraq, especially in Syria.²¹

In January 2018, Turkey carried out a military operation in Syria's Afrin region and took control of the area.²² Many people and representatives of organizations and individuals who spoke out against Turkey's Afrin operation and called for peace were detained and arrested.^{23, 24, 25}

In October 2019, Turkey conducted a military operation in the area between the Syrian cities of Serekaniye and Gri Spi and took control of these areas.²⁶ A military operation called "Operation Peace Spring" was launched on 9 October 2019 in the region between Serekaniye and Gire Spi in northeastern Syria and as the operation was under way Turkey signed two separate memoranda of understanding with the US and Russia, two countries influential in Syria: the Ankara Memorandum of Understanding was signed between Turkey and the US on 17 October 2019²⁷ and the Sochi Memorandum was concluded between Turkey and the Russian Federation on 22 October 2019.²⁸ With these agreements, the geographical boundaries of the military operation were designated.

Turkey has been continuing its military operation against the border areas in northern Iraq, which was last launched in 2020 and continued in April 2022.²⁹ There are serious allegations of violations of the right to life against civilians in this military operation.³⁰ Human rights defender and forensic medicine expert Prof. Dr. Şebnem Korur Fincancı, who is also the chairperson of the central council of the Turkish Medical Association and board member of the HRFT, made a statement on the use of prohibited weapons in these operations. Professor Fincancı is now in prison.³¹

On 22 November 2022, Turkey launched extensive air strikes against the north and north-east of Syria, and subsequently announced a ground operation.³²

Following the constitutional amendment in May 2016 to lift the immunity of MPs, HDP Co-Chairs Selahattin Demirtaş and Figen Yüksekdağ, together with a number of MPs and co-mayors were detained and arrested on 4 November 2016.³³ HDP co-chairs, MPs and elected co-mayors are still in jail and their trials are pending.

Before the arrest of the HDP co-chairs, state trustees were appointed to a total of 94 municipalities, including 10 cities -3 of which are metropolitans (Diyarbakır, Mardin and Van)- 72 districts and 12

²⁰ <https://www.ihd.org.tr/fasizme-darbelere-ve-savasa-karsi-demokrasi-ve-baris-istiyoruz/>

²¹ <https://www.ihd.org.tr/irak-ve-suriye-tezkereleri-savas-tezkeresidir-savasa-karsi-barisi-savunuyoruz/>

²² <https://ihd.org.tr/en/war-kills-no-to-war-we-want-peace/>

²³ <https://ihd.org.tr/en/set-rights-defenders-free/>

²⁴ <https://www.ihd.org.tr/halkevleri-es-genel-baskani-dilsat-aktas-ve-arkadaslari-serbest-birakilsin/>

²⁵ <https://www.ihd.org.tr/turk-tabipleri-birligi-ttb-merkez-konsey-uyeleri-serbest-birakilsin/>

²⁶ <https://ihd.org.tr/en/ihd-statement-on-the-bid-to-extend-the-governments-mandate-in-iraq-and-syria/>

²⁷ https://tr.wikipedia.org/wiki/Ankara_Mutabakat%C4%B1

²⁸ [https://www.wikipedia.tr-tr.nina.az/So%C3%A7i_Mutabakat%C4%B1_\(2019\).html](https://www.wikipedia.tr-tr.nina.az/So%C3%A7i_Mutabakat%C4%B1_(2019).html)

²⁹ <https://ihd.org.tr/en/ihd-insistence-on-conflict-in-the-kurdish-issue-deepens-the-humanitarian-and-economic-crisis/>

³⁰ <https://ihd.org.tr/en/ihd-condemns-the-massacre-in-zaxo-perex-village/>

³¹ <https://ihd.org.tr/en/prof-dr-sebnem-korur-fincanci-should-immediately-be-released/>

³² <https://ihd.org.tr/en/ihd-statement-we-defend-peace-against-war/>

³³ <https://www.ihd.org.tr/tutuklu-milletvekili-ve-belediye-baskanlari-icin-gerceklestirilen-hapishane-ziyaretlerine-iliskin-ihd-raporu/>

towns that were members of the Demokratik Bölgeler Partisi (Democratic Regions Party) as of 11 September 2016 by using the SoE Decree Law No. 674 dated 4 September 2016.³⁴ Along with the decision to appoint trustees, 93 co-mayors were arrested in this process. Gültan Kışanak, co-mayor of Diyarbakır Metropolitan Municipality, and Bekir Kaya, co-mayor of Van Metropolitan Municipality, who were replaced after the appointment of trustees, are still in jail.

The Venice Commission's "Opinion on the Provisions of the Emergency Decree-Law No. 674 of 1 September 2016 which concerns the exercise of Local Democracy" seriously criticizes the practice of trusteeship, cites clear violations of the law and states that Turkey should abandon this practice.³⁵ Turkey, nonetheless, has continued the practice.

The Council of Europe's Congress of Local and Regional Authorities adopted Recommendation 397 (2017) on 29 March 2017, addressing the situation of municipalities with mayors that were dismissed and replaced with trustees and the situation of co-mayors who were arrested following the visit of the Congress rapporteurs to Turkey, and urged the authorities to put an end to this practice and to release the detainees.³⁶ Turkey did not comply with these recommendations either.

IHD monitored the local elections held in Turkey in March 2019 as an independent observer and published its report on this issue.³⁷ The final report of the Council of Europe Congress of Local and Regional Authorities on election observation in March 2019 was released on 12 February 2020.³⁸ In the local elections held in March 2019, HDP won 65 municipalities including 8 cities (3 of which are metropolitan cities), 45 districts and 12 towns. Within a year of their election, trustees were appointed to 47 of these municipalities and 18 co-mayors were arrested.³⁹ Currently, trustees have been appointed to almost all of them except for a few small towns.

The monitoring report prepared by the Committee on the Fulfilment of Obligations and Commitments by Member States of the European Charter of Local Self-Government of the Congress of Local and Regional Authorities of the Council of Europe (Monitoring Committee) following a three-part monitoring visit to Turkey is very important. The first two parts of the visit took place in October and November 2019 respectively, followed by another visit in December 2021 to update the information gathered in 2019, and the final monitoring report was produced. The Monitoring Committee's final report of 23 March 2022 harshly criticizes the trustee appointments and describes the violations of the law.⁴⁰

The protracted armed conflict in Turkey, which started on 24 July 2015, is still ongoing. During this period, HDP MPs whose parliamentary immunity was lifted, DBP and HDP co-mayors, municipal council members and provincial general assembly members from HDP, provincial and district executives from HDP, HDP party assembly members have been subjected to continuous detention and arrest operations. The number of people detained and arrested in this way is estimated to be over 10,000. In 2020, HDP executive board members were detained and charged with 30 different criminal offenses with the indictment prepared by the Ankara Chief Public Prosecutor's Office on 30 December 2020, holding HDP executive board members responsible for the incidents that took place

³⁴ <https://hdpeurope.eu/wp-content/uploads/2020/06/HDP-AND-TRUSTEE-REGIME-IN-TURKEY-18.05.20201.pdf>

³⁵ [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)021-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)021-e)

³⁶ <https://rm.coe.int/090000168070b781>

³⁷ <https://www.ihd.org.tr/31-mart-2019-yerel-secim-sureci-raporu/>

³⁸ <https://rm.coe.int/09000016809cba58>

³⁹ <https://drive.google.com/file/d/1kajDMMP6bw-TaBAgDji1DoQDmtV158ys/view>

⁴⁰ https://search.coe.int/congress/pages/result_details.aspx?objectid=0900001680a5b1d3

during the demonstrations for Kobane on 6-8 October 2014. This indictment was accepted within a week, and the hearings, which started on 2 April 2021, continue at the Ankara 22nd Heavy Penal Court, where the party's central executive board members are still on trial in pre-trial detention.

In February 2021, immediately after the lawsuit filed against HDP central executive board members, the Chief Public Prosecutor's Office of the Court of Cassation filed a closure case against HDP, the 3rd largest party in Turkey. The closure case against HDP is still pending.^{41, 42}

Between 2013 and 2015, during the peace and resolution process in Turkey, Abdullah Öcalan who has been held in İmralı Island Prison had been frequently meeting with state officials and HDP delegations. After the last meeting on 5 April 2015 (he was allowed to confer with his lawyers between May 2019 and August 2019), strict isolation was reinstated and has been in place since August 2019.⁴³

There are serious violations of rights in Turkish prisons. Turkey does not fulfil the recommendations of the CPT. Recommendations of the CoE Committee of Ministers on the right to hope in relation to the ECtHR judgements in the cases of *Gurban*, *Boltan*, *Öcalan* and *Altan* have not been fulfilled.

The Virtual Destruction of the Principle of Rule of Law

The Parliamentary Assembly of the Council of Europe initiated its political monitoring process against Turkey again on 25 April 2017 and its still in place.⁴⁴

The Venice Commission's "Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media" of 13 March 2017 states that the Anti-Terror Law, especially Articles 220 and 314 of the Turkish Penal Code, is used to accuse journalists, politicians, human rights defenders, intellectuals and authors, lawyers and other dissidents of terrorism, and that articles in the Anti-Terror Law and the Turkish Penal Code that prohibit and punish freedom of expression are frequently used, and that there is no freedom of expression and the rule of law is not respected.⁴⁵

In the case of *Encü and Others v. Turkey* (No. 56543/16) dated 1 February 2022, the ECtHR ruled on the violation of the rights of 40 applicant MPs in the application of HDP MPs to the ECtHR regarding the lifting of their parliamentary immunity on 20 May 2016.⁴⁶ Turkey did not fulfil the requirements of this judgement.

The former co-chairperson of HDP, Selahattin Demirtaş, was detained and arrested in Turkey in November 2016. The Grand Chamber of the ECtHR in the case of *Selahattin Demirtaş v. Turkey* (No. 14305/17) dated 12 November 2020 found that his detention was politically motivated and ruled a violation of several articles of the ECHR, including Article 18.⁴⁷ Turkey has not complied with this judgement either. Mr. Demirtaş is still in jail.

In the application to the ECtHR by Figen Yüksekdağ Şenoğlu, the former co-chair of the HDP, and 12

⁴¹ <https://www.ihd.org.tr/demokrasi-ve-insan-haklari-icin-hdpnin-siyaset-yapma-hakkini-savunuyoruz/>

⁴² <https://www.ihd.org.tr/hak-ve-hukuk-orgutlerinden-hdpye-yonelik-kapatma-davasi-hakkinda-ortak-aciklama/>

⁴³ <http://mezopotamyaajansi35.com/GUNCEL/content/view/162739>

⁴⁴ <https://www.ihd.org.tr/avrupa-konseyi-parlamenterler-meclisinin-turkiye-hakkindaki-izleme-karari/>

⁴⁵ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)007-e)

⁴⁶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-215340%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-215340%22]})

⁴⁷ [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22T%C3%9CRK%C4%B0YE%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22\],%22itemid%22:\[%22001-207173%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22T%C3%9CRK%C4%B0YE%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-207173%22]})

other MPs who were detained and arrested in Turkey in November 2016, the ECtHR found in the case of *Yüksekdağ Şenoğlu and Others v. Turkey* (Application no. 14332/17) unjustified detention of 13 applicant MPs and ruled on violation of rights.⁴⁸ Turkey did not comply with this judgement either.

Osman Kavala, founder and chair of the board of directors of Anadolu Kültür Inc., human rights activist, businessperson, was detained in İstanbul on 18 October 2017 on charges of “attempting to overthrow the government” in the context of the 2013 Gezi Park Protests in İstanbul. Mr. Kavala was arrested on 1 November 2017 and is incarcerated in Silivri High Security Closed Prison No. 9. In addition, 12 of 13 academics and rights defenders detained on 16 November 2018 were released while Yiğit Aksakoğlu was arrested. The trial of 16 people including Osman Kavala and Yiğit Aksakoğlu in the case known as the Gezi Trial started on 24 June 2019. Yiğit Aksakoğlu was released on 26 June 2019, while Osman Kavala remained in pre-trial detention.⁴⁹ At the final hearing of the case on 25 April 2022, the İstanbul 13th Heavy Penal Court sentenced Osman Kavala, who has been arbitrarily detained for 1637 days, to aggravated life imprisonment for attempting to overthrow the government without any discretionary reduction, and Mücella Yapıcı, Çiğdem Mater, Hakan Altınay, Can Atalay, Mine Özerden, Yiğit Ali Ekmekçi, Tayfun Kahraman to 18 years each for aiding the attempt to overthrow the government. The court also issued one of the most bizarre judgements in the history of law by ordering the immediate arrest of seven people in the courtroom.⁵⁰

Turkey has not complied with the ECtHR’s 10 November 2019 judgment on Osman Kavala’s politically motivated detention in the case of *Kavala v. Turkey* (Application no. 28749/18). Therefore, upon the application of the Committee of Ministers of the Council of Europe, the Grand Chamber of the ECtHR delivered a violation judgment on the procedure for violation of Article 46/4 of the ECHR in the case of *Kavala v. Turkey* on 11 July 2022.⁵¹ **If the requirements of this judgement are not fulfilled, Turkey may be expelled from the Council of Europe. The principle of rule of law cannot be mentioned at all in such a country.**

In Turkey, one of the most important demands of Alevis within the framework of their demand for equal citizenship is the recognition of *cemevis* as places of worship. The political power ignored this demand and acted as it wished. With the Presidential Decree No. 112 published in the *Official Gazette* of 9 November 2022, the Alevi-Bektashi Culture and Cemevi Presidency was established under the Ministry of Culture and Tourism and it was prescribed that *cemevis* would be affiliated with this department.⁵² The ECtHR’s violation judgments in the cases of the *Republican Education and Culture Centre Foundation Group v. Turkey* (Application no. 32093/10) and the Strasbourg court’s violation judgments in the cases of *Republican Education and Culture Centre Foundation group v. Turkey* (Application no. 1448/04) as well as its violation judgments in the cases of *Hasan and Eylem Zengin v. Turkey* (Application no. 1448/04) have not been complied with and the recommendations made by the Committee of Ministers of the CoE on 2 December 2019 under the monitoring process have also been disregarded.⁵³

The judgements of the ECtHR on the right to freedom of expression, the right to peaceful assembly, and violations of the right to life, the prohibition of torture and ill-treatment and the right to liberty

⁴⁸ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-220958%22%5D%7D>

⁴⁹ <https://www.amnesty.org.tr/icerik/turkiye-dusunce-mahkumu-gezi-davasi-tutuklulari-serbest-birakilmali>

⁵⁰ <https://www.ihd.org.tr/gezi-parki-davasinda-verilen-vahim-kararla-igili-basin-aciklamasi/>

⁵¹ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-218516%22%5D%7D>

⁵² <https://www.resmigazete.gov.tr/eskiler/2022/11/20221109-11.pdf>

⁵³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168098fb6f

of the person are not fulfilled. Therefore, Turkey is under the monitoring of the CoE Committee of Ministers on these issues as well.

The joint report by İHD and the Observatory for the Protection of Human Rights Defenders (OBS) entitled “Permanent State of Emergency: Attacks on Freedom of Assembly in Turkey and Its Repercussions on Civil Society”⁵⁴ was published on 25 November 2020. Another joint report by İHD and the OBS entitled “Turkey’s Civil Society on the Line: A shrinking Space for Civil Society”⁵⁵ was published on 6 May 2021. These reports clearly reveal the ways in which the state of affairs in the country, particularly for civil society, has been deteriorating.

İHD’s special report drafted for the OMCT, “Human Rights Defenders in an Iron Cage: the Anti-Terror Law” lays bare the fact that all dissident groups in the society are subjected to judicial harassment through the abuse of the Anti-Terror Law.⁵⁶

THE FRAMEWORK OF ELECTORAL LEGISLATION

Article 79 of the Constitution of the Republic of Turkey regulates the general administration and supervision of elections. Accordingly, it is prescribed that the elections shall be held under the general administration and supervision of the judicial organs, that the Supreme Board of Elections (SBE) oversees taking all actions regarding the orderly administration and integrity of the elections from the beginning to the end, and that no other authority may be appealed against the decisions of the SBE.

The SBE has seven regular and four substitute members. Six of these members are elected by the General Assembly of the Court of Cassation, and five by the Council of State’s. At first glance, it is assumed that the SBE is composed of impartial and independent judges.

Article 159 of the Constitution regulates the Council of Judges and Prosecutors (CJP). The CJP consists of 13 members. Of these 13 members, one is the Minister of Justice and one is the Deputy Minister of Justice. Both are directly appointed by the president of the country. 4 of the CJP members are directly appointed by the president. 3 members of the CJP are elected by the Court of Cassation, 1 by the Council of State and 3 by the Grand National Assembly of Turkey. Since the 3 members elected by the GNAT are elected with the votes of the majority party and since the majority party in Turkey is the AKP, the determining factor in the election of these 3 members is the president, who is also the head of the AKP.

The members of the Court of Cassation are appointed by the CJP and some of the members of the Council of State are appointed by the CJP and some by the president. As a result, the members of the Court of Cassation and the Council of State appointed by the CJP, the majority of whom are appointed by the president, are indirectly the members whose appointment is approved by the president.

Regarding the 16 April 2017 Constitutional Referendum, the Venice Commission’s “Opinion on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and

⁵⁴ <https://ihd.org.tr/en/a-perpetual-emergency-attacks-on-freedom-of-assembly-in-turkey-and-repercussions-for-civil-society/>

⁵⁵ <https://ihd.org.tr/en/wp-content/uploads/2021/05/OBS-İHD-TURKEY.pdf>

⁵⁶ https://ihd.org.tr/en/wp-content/uploads/2022/05/OzturkTurkdogan_ATL-Report_OMCT_EN.pdf

to be Submitted to a National Referendum on 16 April 2017⁵⁷ of 13 March 2017 can be consulted. In this opinion, the Commission stated that if this constitutional amendment was to be adopted, the judiciary would come under the control of the president and the independence of the judiciary would be seriously undermined.

Article 79 of the Constitution stipulates that the decisions of the SBE cannot be appealed to any other authority. The word “authority” (merci) appears in the text of the Constitution. However, the Constitutional Court has misinterpreted the text of the Constitution and by ruling that no appeal can be made against the decisions of the SBE, the Constitutional Court has placed the SBE in a position above the Constitution itself.⁵⁸ We believe that the Constitutional Court in its decisions with regards to related applications (Nos. 2015/15762 and 2015/16438) did not act in accordance with the Constitution.

Article 114 of the Constitution, before it was amended by the constitutional referendum, stipulated that the Ministers of Justice, Interior and Transport should resign 3 months before the general elections and be replaced by impartial persons. Since this rule was abolished with the constitutional amendment, the administration and security of the elections are supposed to be ensured by the ministers appointed by the president, who is currently the leader of a political party.

Law No. 298 on Basic Provisions of Elections and Voter Registers

The issues missing in the amendments introduced to this law in 2018 were virtually completed with the amendments of 2022 while these regulations were made in favor of the political power. These amendments are contrary to the principle of integrity of elections.

The Venice Commission has important opinions on the amendments introduced in Turkey regarding the elections. These opinion reports are as follows:

- “Draft Joint Opinion on Amendments to the Electoral Legislation and related ‘Harmonization Laws’ Adopted in March and April 2018” (CDL-AD (2018)034-e) of 9 November 2018,⁵⁹
- “Joint Opinion of the Venice Commission and ODIHR on Amendments to the Electoral Legislation and related ‘Harmonization Laws’ Adopted in March and April 2018” (CDL-AD(2018)031-e) of 17 December 2019,⁶⁰
- “Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Amendments to the Electoral Legislation by Law No. 7393 of 31 March 2022” (CDL-AD(2022)016-e) of 20 June 2022.⁶¹

The points made in these reports and our opinions stated below are compatible.

⁵⁷ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)005-tur](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)005-tur)

⁵⁸ <https://www.anayasa.gov.tr/tr/haberler/bireysel-basvuru-basin-duyurulari/yukse-secim-kurulu-kararlari-aleyhine-bireysel-basvuru-yapilamayacagina-iliskin-kabul-edilemezlik-kararlari-basin-duyurusu/>

⁵⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2018\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2018)034-e)

⁶⁰ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)031-e)

⁶¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)016-e)

Amendments to Law No. 298

Article 5 of Law No. 298 was amended by Law No. 7102 of 13 March 2018, and it was regulated that voters in the same building can vote in different ballot boxes. Thus, by preventing voters from voting in the same ballot box with their neighbors, voters' natural control and observation of the voting process have been prevented.

Paragraph 11 of Article 14 was amended by Law No. 7393 of 31 March 2022 making it easier for the visually impaired to vote, and it was regulated that political parties cannot enter the elections if they fail to hold not only their grand congresses but also provincial and district congresses consecutively twice. This regulation is in favor of the parties that receive financial aid from the state and against the parties that do not receive financial aid.

Paragraph 15 of Article 14 was amended by the Law No. 7102, and it was regulated that the number of voters in a polling district could be determined flexibly.

Paragraph 16 of Article 14 was amended by Law No. 7102, and it was regulated that ballot boxes could be moved to another place if the governor or the chairperson of the provincial election board requested as such one month in advance. With this regulation, it has been made possible to move many ballot boxes in the Eastern and Southeastern Anatolia Region under the pretext of security risks.

Paragraph 1 of Article 15 was amended by Law No. 7393 and the rule for the election of the chairperson and members of the provincial and district election boards was changed, thus interfering with the election of the election board chairperson.

Article 17 was amended by Law No. 7393 and the parties that were qualified to run in the elections were required to have representatives in the provincial and district election boards, provided that they had organized structures.

Article 18 was amended by Law No. 7393 and intervened in the election of the chairperson of the district election board, just like Article 15.

Article 22 was amended by Law No. 7102, and it was stated that the chairperson of the district election board would select the chairperson of the ballot box committee by drawing names from among all public officials in the district. In the post-SoE period, after more than 100,000 public officials were dismissed from public office with emergency decrees, the way has been paved for the appointment of pro-government public officials as the chairpersons of the ballot committees among the remaining public officials.

Article 23 was amended by Law No. 7393, and it was regulated that a member of another party could not be nominated as a member of the ballot box board without the consent of a party that had the right to nominate a member to the ballot box board. There are more than 200,000 ballot boxes in Turkey. This article was changed to particularly prevent the HDP from having members in the ballot box board.

Paragraph 1 of Article 33 was amended by Article 4 of Law No. 5749 of 13 March 2008, and it was regulated that the voter registers would be determined by the SBE based on the address registration system affiliated with the Ministry of Interior. Until this date, the voter registers of the SBE were kept completely independently by the SBE. After 2008, the linking of voter registers to the address-based

population registration system has created a great deal of suspicion. According to some observers, it is assumed that there are between 1 and 3 million phantom voters in Turkey. As a person who observes elections, I can say that the way to prevent such doubts is to conduct a real census in Turkey. During the COVID-19 pandemic, everyone stayed at home in accordance with quarantine regulations. This means that the population can be counted by keeping people at home for a day. Moreover, it should be noted that it has been observed in FETÖ/PDY investigations and prosecutions that many IT-based systems, including central examination systems, have been interfered with. I would like to state that the voter registers created with this amendment to the law, which was carried out during the period when this organization was most active, should not be trusted.

Article 33 was amended by Law No. 7393, stating that the voter registers three months prior to the start date of the election should be taken as basis in the local administration elections, thus, creating compulsory voters.

Article 36 was amended by the Law No. 7393, stipulating that those whose addresses were not updated would be registered in the voter registers at their last addresses in the address-based population system, thereby, interfering with the will of the voters.

Article 40 was amended by Law No. 7393, interfering with the will of the voters by stating that if the transfer of voters was deemed suspicious during the display period of the voter registers, the transfer would not be made and the previous voter registration would continue.

Articles 65-66 and 115 were amended by Law No. 7393, and the president of the country was made exempt from electoral restrictions.

By adding an additional paragraph 2 to Article 68 by the Law No. 7102, it was regulated that the ballot paper used for the presidential and parliamentary elections could be placed in the same envelope. However, these should be placed in separate envelopes in the procedure.

Article 81 was amended by Law No. 7102, and the definition of the polling station was changed, and it was defined only as the room where the ballot box was placed. In this case, law enforcement officers are allowed to enter the corridors in front of the room which is not regarded as a polling station.

Article 98 was amended by Law No. 7102, and envelopes without the seal of the ballot box committee were accepted as valid. Thus, the way for external intervention was paved. As a matter of fact, unsealed ballot papers and envelopes were accepted as valid in the 2017 referendum and the “no” vote in the referendum was converted to “yes.”

Article 101 was amended by Law No. 7102 and unsealed ballot papers were accepted as valid.

Provisional Article 24 was added by Law No. 7393, which was adopted by the GNAT on 31 March 2022 and was published on 7 April 2022, and it was stated that provincial and district ballot box committee chair elections would be held within 3 months and the elected persons would serve for 2 years. After the publication of this law, almost the largest number of appointments of judicial justices (adli yargı hâkimi) in the history of Turkey were made. Following these appointments, provincial and district election board presidency elections(!) were held before the 3-month period expired among the judges who just assumed their new posts.

Law No. 7393 was deliberated by the Constitutional Commission of the GNAT, and the opposition parties CHP, HDP and İyi Party’s dissenting opinions against the commission report were quite

comprehensive.⁶²

Law No. 2839 on Parliamentary Elections

With Law No. 7393, the 10% election threshold in Article 33 of Law No. 2839 was reduced to 7%. In the presidential government system, stability in governance is already ensured by the president receiving over 50% of the votes. The principle of justice in representation has been violated by leaving the threshold at 7%, which should be at most 3% in order to have the 20 deputies required to form a group in the GNAT.

This was not enough. By Law No. 7393, a regulation contrary to the principle of justice in representation was made by introducing the parties forming alliances in Article 34 of Law No. 2839 to have separate deputies according to the rate of votes they received. Before the 2018 elections, the parties forming alliances were reflected on the total votes, while by Law No. 7393, the parliamentary deputies according to the proportion of votes received by the parties is a regulation introduced for political purposes and will result in the disadvantage of smaller parties. Thus, the law on parliamentary elections was amended according to the conjunctural needs of the political power.

Law No. 2820 on Political Parties

By Law No. 7393, Article 36 of Law No. 2820 was amended to remove the provision that parties with a group in the parliament could run in the elections, thus, making it more difficult by obliging parties to hold district, provincial and grand congresses in order to run in the elections.

MEDIA

Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed by means of Such Publication

Law No. 7418, commonly known as the disinformation law, was adopted by the Turkish Grand National Assembly on 13 October 2022. Before this law was enacted, the Human Rights Joint Platform indicated in a statement that it would have serious drawbacks.⁶³ With Articles 31, 32, 33, 34, 35 of this law, important amendments were introduced to Law No. 5651. The most important feature of these amendments is that the control over social media has been further increased, the authority to block access to social media through band narrowing has been expanded and new restrictive measures have been introduced regarding social network providers. Thus, in the pre-election period, the political power has brought the social media to a point where it can control it as it wishes. For example, the broadcasting ban after the attack on 13 November 2022 in Taksim, İstanbul's İstiklal Street and the blocking of social media on the same night is an initial instance of such control.

With the Law No. 7418, Article 217/A was added to Article 217 of the Turkish Penal Code No. 5237.

⁶² <https://www5.tbmm.gov.tr/sirasayi/donem27/yil01/ss321.pdf>

⁶³ <https://ihop.org.tr/basin-kanunu-ile-bazi-kanunlarda-degisiklik-yapilmasi-hakkinda-kanun-teklifine-iliskin-gorusumuz/>

Accordingly, the offence of publicly disseminating misleading information has been regulated and a prison sentence of 1 to 3 years has been stipulated.

Law No. 5651 was amended by Law No. 7418 and a new offence has been defined, creating a situation where social media users and print and visual media will apply self-censorship. Apart from this, an unpredictable and unlawful offence has been created in a completely abstract manner, leaving the definition of misleading information to the law enforcement and the competent prosecutors' offices.

Law No. 7418 made significant amendments to the Press Law and introduced serious restrictions on the issuance of press cards.

Regarding Law No. 7418, there is the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the CoE called "Urgent Opinion on the Draft Amendments to the Penal Code regarding the Provision on 'False or Misleading Information'".⁶⁴ of 21 October 2022. Unfortunately, Turkey did not comply with the recommendations in this opinion and the political power enacted the law as mentioned above.

CONCLUSION and RECOMMENDATIONS

1. As the OSCE has stated in all its reports on the elections in Turkey, regulations should be made or the SBE should grant permission for independent election observation by Turkish citizens and civil society organizations in accordance with the Copenhagen Criteria.
2. The SBE is not a supreme court like the Constitutional Court. An individual application procedure to the Constitutional Court against the decisions of the SBE should be provided.
3. A census should be conducted to end the speculation about the voter registers in Turkey and to create a new voter registry under the full control of the SBE. During the COVID-19 pandemic, people were kept at home under quarantine conditions and ensured to follow the rules. As was done in the past, all citizens can be kept at home on a Sunday so that a real census can be conducted.
4. Until the voter registers are renewed, it should be ensured that electoral ink or stain is used in the elections.
5. In order to ensure election and ballot box security, the amendments to the law that we have criticized in this report should be withdrawn and arrangements should be made to ensure the formation of an election administration in accordance with the principle of integrity of elections and to ensure trust in provincial/district election boards and ballot box committees, especially the SBE.
6. The ballot box result reports with wet signatures should be handed to all voters who voted in that ballot box, if they wish, so that voters can also be observers in their own ballot boxes when the ballot boxes are unsealed.
7. A secure, online system available to the supervision of political parties should be established to ensure that the ballot box result minutes are uploaded to the system at the same time

⁶⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)034-e)

and the ballot box result minutes of the entire country should be announced unofficially 2 hours after the ballot boxes are unsealed. This is quite easy to do as all schools in Turkey where votes are cast have internet access.

8. Since the current electoral laws contain changes in favor of the political power, all opposition political parties and all social dissidence organizations with an interest in the elections must cooperate on election and ballot box security. Such cooperation will lead to an organization all over Turkey, which will minimize violations.

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