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The right to hold a peaceful assembly in Turkey

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FORUMDIALOG
GEMEINSAME WERTE - GESELLSCHAFTLICHE VIELFALT


AKTION
für Flüchtlingshilfe

STIFTUNG
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BILDUNG

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The Dialogue and Education Foundation (Stiftung Dialog und Bildung) is a foundation of people who are active in Hizmet (the "Gülen Movement"). Hizmet's commitment to intercultural dialogue and education has developed from individual local initiatives and has grown in many ways. Against this background, the foundation acts as a point of contact for committed individuals, partners and interested parties as well as the media and politics, providing answers to questions relating to Hizmet. At the same time, it initiates new projects and concepts in the field of dialogue and education.



**AKTION
für Flüchtlingshilfe**

The „Aktion für Flüchtlingshilfe e.V.“ is an association which aims to help people who had to flee from Turkey and seeking political asylum in Berlin-Brandenburg. The main objective of the Association is to provide support for refugees to integrate into German society and to make the victims of the political persecution of Turkey to be heard and known by the Western public and international institutions.

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„Forum Dialog“ is a nationwide active dialogue initiative, which promotes a peaceful coexistence in Germany, bringing together people with different convictions in round tables, workshops, conferences and various cultural events. In addition to religious content, the Forum also deals with current social and political issues.

Executive Summary

1. Turkey is the signatory of International conventions which ensures the freedom of assembly.
2. Turkish Law guarantees the right to hold an assembly in peaceful way.
3. However there are a few side laws which undermine and hinder the freedom of peaceful assembly and demonstration.
4. In practice, especially since 2016 (under the Emergency Rule and after) restrictions upon the right to peaceful assembly has become ordinary in Turkey.
5. While pro-government groups enjoyed on a large scale the freedom of assembly and protests, the assemblies of all the oppositions (such as Kurdish political groups, LGBT's, Leftists and Gülenists) were strictly restricted or banned by the authorities.

Legal framework

6. Turkey has ratified the regional and international conventions that enshrine freedom of assembly such as the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights. Article 90 of the Constitution recognizes the pre-eminence of international ratified treaties over national law.
7. The right to freedom of peaceful assembly is regulated under the Article 34 of the Constitution as a constitutional right under the title of "Right to Hold Meetings and Demonstration Marches": "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission". The constitution recognizes the equality between men and women (Article 10).
8. The Law on Meeting and Demonstration No. 2911 (Hereafter "the Law"), defines under its Article 2 a) Meeting: "means that (...) meetings that are organized in open and closed places in the framework of this law by real and juridical persons on specific issues to enlighten

people and to create public opinion; b) Demonstrations: "demonstrations (marches) that are organized in the framework of this law by real and juridical persons on specific issues to enlighten people and to create public opinion"

9. The Constitution importantly protects "public statements" by stating that "Everyone has the right to express and spread his/her thoughts and opinions, individually or collectively, with verbal, written, visual or other means". However, the Article 26 of the Constitution expresses in its last paragraph, "The forms, conditions and methods that would be used to express and spread freedom of thought is regulated by law". Despite the Article 26 of the Constitution, there is no law or provision with regard to spontaneous assemblies or collective or individual expression of thought. In other words, these rights are regulated by secondary legislative tools which are open to broad interpretation and can be easily violated, whereas if these rights were regulated by law, there can be more guarantees for citizens,
10. There are several other laws that effect the right to freedom of peaceful assembly: 1) Martial Law No. 2935, 2) Anti-Terror Law No. 3713, 3) The Law on Private Security Services No. 5188, The Law on the Duties and Responsibilities of Police No. 2559, 5) The Law on Associations No. 5253, 6) The Law on Political Parties No. 2820, 7) The law on the Basic Principles of Elections and Electors' Records No. 298, 8) The law on Province Administration No. 5442, Turkish Penal Code No. 5237 (TPC).
11. As a result of ambiguous and wide scope of the definition of terrorism in the Article 1 of the Anti-Terror Law, thoughts expressed in demonstrations and marches can be deemed as terrorist activities rather than freedom of assembly and expression. In addition, within the framework the Articles 6 and 7 of the Anti-Terror Law those who join demonstrations can be accused of being terrorist or committing terror crimes for their slogans and placards in the demonstrations.

12. Freedom of assembly in Turkey is governed by a declaration regime. However, an authorization is needed for the meetings open to public and in the open air.
13. There is no provision on spontaneous assemblies and undeclared assemblies are banned and give rise to sanctions (see *infra*). In practice, spontaneous assemblies are treated as collective public statements (permitted) or are dispersed as illegal, according to the political assessment of the authorities.

Restrictions

14. The Article 34 of the Constitution declares that “The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others”. These restrictions conform to Article 11/2 of the European Convention on Human Rights and to the International Covenant on Civil and Political Rights. However, the Constitution does not include the safeguard present in international conventions that restrictions can only be taken “as necessary measures in a democratic society”.¹ In fact, the Law on assemblies introduces extensive restrictions.
15. Article 17 of the Law limits the restrictive measures to “legitimate aims” but leaves a large appreciation margin to the administrative authorities and does not foresee as such proportionality. Furthermore, the Law does not oblige the administration to explain and argue what are the necessities of public order, security or prove the imminent danger.

¹ See also Human Rights Council, Resolution 15/21, 15th session, 30 September 2010, UN Doc. A/HRC/RES/15/21, OP 4; Human Rights Committee, *Belyazeka v Belarus*, Communication no. 1772/2008, 23 March 2012, para. 11.7; Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 20th session, 21 May 2012, A/HRC/20/27, para. 16.

16. The Law puts important restrictions on content and messages that are tolerated in assemblies, in flagrant contradiction with international standards. Indeed, Article 23 on Sanctions (see point 5. below) states that one shall be punished with prison in case of bearing “symbols of illegal organizations, uniforms with these symbols, chanting illegal slogans, carrying illegal posters, signs, pictures etc.” The concept of “illegal organization” may change according to State policies, and that of “illegal slogans” or “illegal pictures” is too broad and vague to be acceptable under international law.²
17. The Law 7145 extends the power of governors to restrict movement and ban public assemblies within the boundaries of the province they govern and allows police to hold some suspects for up to 12 days without charge. Turkish authorities must repeal all emergency measures and other legal changes which are not demonstrably necessary and proportionate, or which entail disproportionate restrictions on the exercise.
18. There are several police laws and circulars that are relevant to the use of force in the context of demonstrations. The general Law No 3201 on Security Affairs, and the more specific Law No 559 (1934) on Police Attributions and Obligations, amended by law No 5681 of 2007. The latter authorizes the use of weapons against a group that “resists the police or prevents them to carry out their duty”.
19. Article 24 of the Law on meetings and demonstration states that a warning will be made and force will be used in case of the participants do not disperse after the warning. The principles of proportionality and graduation in the use of force are stated in an Order on rapid intervention forces (Polis Çevik Kuvvet Yönetmeliği) of December 30, 1982. It establishes strict procedures for the dispersal of demonstrators, such as 3 warnings; the establishment

² On content-based restrictions and the limits of criticism, see European Court of Human Rights, *Incal v Turkey*, judgment of 9 June 1998, para. 54; Second Report of the Special Rapporteur on FPAA, Human Rights Council, 23rd session, 24 April 2013, A/HRC/23/39, para. 59; OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 2010, Warsaw, 2nd edition, section B (Explanatory notes), paras. 94-97.

of minutes proving the warnings were heard from the furthest point in the crowd; and the gradual use of physical force, material force and weapons.

20. A Circular was issued on February 15, 2008 to regulate the conditions of use of tear gas. It also puts strict conditions on its use, such as the presence of medical staff, warnings before use, gradual and proportionate increase, the clearing of exits for the crowd to disperse, the prohibition of direct firing at people in all cases, and the prohibition of using gas against people who have stopped resisting or attacking. However, due to the vague provisions of the Law on Security Affairs, law enforcement officers enjoy an extraordinary large decision margin for the forceful dispersal of assemblies. Numerous judgments of the European Court of Human Rights have shed light on violations and have recommended that the law should regulate the use of force more strictly and not leave it to the arbitrary decision of civil servants.³
21. It is possible to refer to administrative courts to lodge an official complaint in case of State's failure to comply with its protection obligation. However it is doubtful whether they are an effective remedy as foreseen in Article 13 of the European Convention on Human Rights.⁴ Indeed, according to statistics of the European Court of Human Rights (ECtHR), between 1995 and 2011, 87.5% of ECtHR judgements on Turkey reveal that there has been a violation, while the Turkish courts had not judged so.
22. Law-enforcement officials are theoretically accountable for excessive use of force and human rights violations. However, according to Article 129 of the Constitution, an

³ Abdullah Yasa and others v. Turkey; Oya Ataman v. Turkey; Ali Güneş v. Turkey; DISK and KESK v. Turkey

⁴ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." <http://www.hri.org/docs/ECHR50.html> .

authorization is compulsory to investigate public officials. The “Law on the Trial of Officers and Other Public Officials No. 4483” reiterates this authorization system.⁵

23. Article 23 of the Law enumerates the numerous grounds for sanctions : a) Holding an assembly without notification, or holding it before or after the notified date and time; b) Bearing any kind of firearms, explosives, cutting and perforating tools, stones, sticks, poisons, gas or fog materials, as well as symbols of illegal organisations, uniforms with these symbols, covering faces to prevent identification, chanting illegal slogans, carrying illegal posters, pictures etc.; c) Holding an assembly outside of the timing restrictions foreseen in art. 7 or d) Outside the places mentioned in Articles 6 and 10 [i.e. the places that are determined by the administration]; e) Noncompliance to the methods and conditions mentioned in Article 20 and to the prohibitions and measures mentioned in Article 22 [see the paragraph on the article]; f) Transgressing its own aims, rules and limits defining meetings that are not required authorization according to Article 4; g) Gatherings aiming at committing a crime defined by law; h) Transgressing the aim mentioned in the notification; i) Holding an assembly before the end of the postponing or banning period; j) Maintaining the Assembly after the government’s commissariat finalized it; k) The meetings that do not comply with the Paragraph 2 of Article 3 (about Foreigners) will be considered as illegal.
24. Article 28 of the Law provides several sanctions such as, a) 18 months to 3 years of imprisonment for those organize and lead illegal meetings; b) Up to 12 months of imprisonment for who do not conform to specific requirements yet organize meetings, and for the members of the organizing committee who do not have the necessary conditions (juridical capacity and at least 18 year old); c) 6 months to 2 years of imprisonment for the

⁵ See for example the case on the murder of Hrant Dink and its investigation phase. Cases against 40 public officials (army and police officers) were obstructed with authorization procedures. ECtHR Dink vs. Turkey (Application no, 2668/07, 6102/08, 30079/08, 7072/09 et 7124/09) decision, (14 September 2010).

members of the organizing committee who were not present during the meeting and who fail to perform their duties; d) Two to five years of imprisonment who uses violence against law-enforcement and government's commissariat.

25. Whereas participants are held responsible individually, organizers, as a committee, face collective responsibility according to the Article 28. Indeed organizers face special civil liability (For example to pay for cleaning, security...) and criminal responsibility (for example, in case of violence, material damage...). These heavy sanctions and the extra liability for organizers are a strong deterrent to exercise the right to assemble and can amount to a limitation to the right to assembly.
26. The sanctions are detailed in the Law and mentioned above but the laws in general (and specifically the Law No. 2911) have problems in terms of transparency, predictability, clarity and the rule of law principles.
27. In 2018, several governors continued to use the extraordinary powers they enjoyed under the state of emergency to restrict the right to peaceful assembly, including after the end of the state of emergency in July.
28. The ban on all LGBTI events the Ankara governor issued in November 2017 remained in force in 2018. With the exception of the Middle East Technical University student Pride march, which went ahead in May despite the ban, the visibility of the city's vibrant LGBTI communities and ability to exercise the right to peaceful assembly have been dramatically reduced. Istanbul Pride march was also banned for the fourth year in a row. Despite the ban, a group was able to gather in a small side street surrounded by riot police, instead of the major pedestrianized avenue where they marched for years without issue until 2015.
29. The peaceful gathering of the 'Saturday Mothers', a group that held weekly vigils for victims of enforced disappearances since the mid-1990s, has been banned since August 2018.

The group, primarily composed of female relatives of the disappeared, was forced to disperse on 25 August 2018 after the police used tear gas and water cannons. They have not been permitted to hold their vigil in their traditional location ever since despite the fact that their gatherings and speeches made during them are entirely peaceful in nature.

30. Hundreds of construction workers and five trade union representatives were detained on mass in September 2018. These construction workers were among thousands who protested poor working and living conditions on the site of Istanbul's third airport, demanding action over arbitrary dismissals, late pay, poor workplace safety standards and a bedbug infestation in the workers' sleeping quarters. Workers have also complained of the high numbers of accidents, including fatal accidents, at the site. 61 of the workers are being tried for their involvement in the protests, of whom 31 remained in prison custody for around two months until the first hearing of the trial took place on 5 December.
31. University students continue to be targeted for participating in peaceful protests or writing critical social media posts. Among these are 30 students from Boğaziçi University who are on trial for peacefully protesting Turkey's military involvement in Afrin, Syria; four students from the Middle East Technical University who are on trial for displaying a banner depicting a caricature of President Erdoğan during the university's graduation ceremony; and one student from the Black Sea Technical University who is on trial for 'insulting the President' in a social media post about journalism.
32. Members of Gülen Movements were arrested and many have been sentenced on the ground of holding private meeting (sohbet) in their houses. Meeting with others and reading Gülen's books were held as criminal activities although there is no law against it.

33. Many people such as Journalist Kamil Maman were accused as being member of so called terrorist organization (FETO) on the basis of participation of the protests in front of Zaman and Bugun newspapers which were closed down by the Turkish government.⁶
34. Turkish authorities must ensure that people can gather and protest peacefully without fear, including by putting a stop to the repeated bans which have been imposed on LGBTI events, the 'Saturday Mothers' and other peaceful demonstrations across the country. Peaceful expression on online platforms such as Facebook and Twitter must not be criminalized.

Recommendations

35. Article 3 of the Law should be reformulated and underline that the right to hold meetings and demonstrations is a right that everyone can enjoy equally without discrimination or restriction; Article 6 should be changed to guarantee that meetings and demonstrations can be held everywhere and to abolish sweeping time limitations;
36. Spontaneous demonstrations should not be considered as illegal and should be tolerated as long as they remain peaceful;
37. An effective mechanism to appeal any decision banning or imposing restrictions on an assembly should be guaranteed by creating a specific rapid mechanism in administrative courts;
38. The use of force should be more strictly regulated, in conformity with the recommendations of the European Court of Human Rights, and the margin of decision of law-enforcement agents in the policing of assemblies should be reduced;
39. An independent police complaints mechanism should be created to guarantee an effective remedy to victims of excessive use of force and human rights violations;

⁶ Case No: 2016/4, Istanbul 13. Ağır Ceza Mahkemesi

40. The sanctions foreseen in the law should be reduce, in particular excluding criminal and freedom-depriving sanctions, and eliminating the organizers' criminal responsibility regarding possible breaches of peace and order and possible damages, and limit their civil liability regarding cleaning and security, in order to promote freedom of assembly.

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