



UNIVERSAL PERIODIC REVIEW

THIRD CYCLE - TURKEY

Human Rights Agenda Association Submission, İzmir, Turkey

International Conventions

Republic of Turkey is a state party to many of the human rights law and humanitarian law related conventions and protocols at universal and regional level. Turkey is a state party to 70 of 94 detected human rights conventions and protocols; has put several reservations to 17 of these; signed 9 of them which she is not a party, but has not yet ratified¹.

The Rome Statute establishing an International Criminal Court (ICC), is one of the conventions which Turkey has not acceded yet. Article 38 of the Constitution after the 2004 constitutional amendments which gives reference to ICC in the language, places Turkey as a unique state in the world in this regard. Turkey must accede to Rome Statute and in order to enhance the power of the court, Turkey must sign and ratify the Elements of Crimes, Rules of Procedure and Evidence, and Privileges and Immunities documents of the court. In this respect, the article on crimes against humanity in the Turkish Penal Code should be revised and the domestic law should be enacted on war crimes and aggression. The ratification of Protocols I, II and III to the 1949 Geneva Conventions on war crimes is an obligation.

It also attracts attention that Turkey puts reservations and declarations to conventions and protocols which she is a state party. The Human Rights Agenda Association (HRAA) invites the Republic of Turkey, which has the responsibility of being a civilized state, to become party to all human rights conventions and protocols and requests the removal of all reservations and declarations that put in which would be contrary to the object and purpose of the conventions and protocols.

Starting from International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the declaration which was put in to some of human rights

1 University of Minnesota Human Rights Library <http://www1.umn.edu/humanrts/research/ratification-turkey.html> ; International Treaties Adherence, Rule of Law in Armed Conflicts Project http://www.adh-geneve.ch/RULAC/applicable_international_law.php?id_state=226 ; UN Treaty Collection, Multilateral Treaties Deposited with the Secretary General, UNODA Disarmament Treaties Database <http://disarmament.un.org/treaties/> ; ILO NORMLEX, Ratifications for Turkey, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102893 ; United Nations Treaty Collection <https://treaties.un.org/pages/ParticipationStatus.aspx> ; CoE Treaty Office, Complete list of the CoE treaties, <https://www.coe.int/en/web/conventions/full-list> (10.07.2019).

conventions and protocols which Turkey is a party, is a reservation in nature and should be removed².

The reservation³ which was put in to some human rights conventions and protocols which Turkey is a party, particularly including the International Covenant on Civil and Political Rights (ICCPR), should be abolished in line with the general comment No. 23 of the UN Human Rights Committee⁴. Turkey, which is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) has put a reservation to the convention regarding the paragraphs 3 and 4 of Article 13 will be implemented according to the provisions in the Article 3, 14 and 42 of of the Constitution. The above mentioned paragraphs of the Convention relate to the freedom of parents to give their children religious and moral beliefs in accordance with their own beliefs and to the freedom to establish educational institutions. This reservation, which constitutes an obstacle on religious freedoms, should be lifted. In addition, an additional protocol on individual application should be signed and ratified (OP-ICESCR). Under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), a functional, not formal, national preventive mechanism should be introduced. Since the Human Rights Institution of Turkey (TİHK) and its successor Human Rights and Equality Institution of Turkey (TİHEK) are not compatible with the Paris Principles, a new and contemporary structure should be established.

Turkey has made a reservation stating that, it reserves the right to interpret the Convention on the Rights of the Child (CRC)'s Article 17, 29 and 30 in accordance with the provisions and spirit of the Republic of Turkey Constitution and the Lausanne Peace Treaty. These reservations should be removed.

Turkey, which is a state party to the Optional Protocol to CRC on the involvement of children in armed conflict (OP-CRC-AC), has declared that the provisions of the Protocol will only apply against states that are recognized and has established diplomatic relations. In the second declaration, considerations such as minimum age in compulsory military service and the status of students of military high schools were evaluated and declared to be in compliance with the provisions of the Protocol. The last declaration stated that the reservation to Article 29 of the Convention on the Rights of the Child remained in full force and effect. All three declarations should be removed.

Turkey which has ratified Optional Protocol to CRC on the sale of children, child prostitution and child pornography (OP-CRC-SC), has declared the provisions of the Protocol can only be applied against a state party that is recognized and has established

2 “The Republic of Turkey declares that it will apply only to the States with which it has diplomatic relations with the provisions of this Agreement.”

3 “The Republic of Turkey, reserves the right to apply Article 27, in accordance with the provisions and procedures related to the Constitution of the Republic of Turkey and the Lausanne Treaty of 24 July 1923 and the Annex.”

4 According to General Comment No. 23, the presence or absence of a minority is not bound to a decision by the State. This asset (or absence) should be determined according to objective criteria. See. General Comment 23 of the Human Rights Committee: Minority Rights (Art. 27), CCPR / C / 21 / Rev. 1 / Add. 5, 04.08.1994.

diplomatic relations. This declaration is a reservation in real and should be removed.

Turkey which is a state party to the Optional Protocol to CRC on a communications procedure (OP-CRC-IC), declares that the declarations and reservations put in related conventions and protocols are also valid for this protocol. These reservations and declarations should be removed.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was ratified by Turkey. Turkey declared that it is put as a reservation that, foreigners will maintain the validity of the limitations stipulated in the law on the acquisition of real estate in Turkey; 2nd, 3rd and 4th paragraphs of the Article 45 of the Convention will be implemented in accordance with the Constitution and Laws of the Republic of Turkey; Article 46 will apply in accordance with national customs legislation provisions; Protection of the rights of All Migrant Workers, Children and Families Committee's powers of will be recognized at a later time and migrant workers and their family members' rights to form trade unions in the state in which they are employed can not be valid in terms of the laws of Turkey. Turkey's all reservations should be removed.

Convention on the Legal Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol to the 1951 Refugees Convention) respects Turkey as the only country that retains its geographical reservation. Turkey, which puts this declaration in terms of refugees and asylum seekers coming from the east of the country should remove this declaration, since the said declaration is clearly contrary to the object and purpose of the convention.

Turkey's accession to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is required.

RECOMMENDATIONS:

- Turkey must urgently accede to the Rome Statute establishing the International Criminal Court; she must be a party by signing and ratifying the Elements of Crimes, Rules of Procedure and Evidence, and Privileges and Immunities Documents attached to the Statute.
- Turkey must approve Protocols I, II and III of the 1949 Geneva Conventions.
- Particularly (ICCPR), reservations put to some human rights conventions and protocols which Turkey is a party, should be abolished in line with the general comment No. 23 of the UN Human Rights Committee.
- Particularly (ICERD), the declaration put in some of human rights conventions and protocols which Turkey is a party, which is a reservation in nature, should be removed; Turkey should compromise with the spirit of international conventions by not putting declarations and reservations to be contrary to the object and purpose of the conventions.
- The reservations made to the International Covenant on Economic, Social and Cultural Rights (ICESCR) should be abolished and the additional protocol on individual application should be acceded (OP-ICESCR).
- In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), a functional, not formal, national preventive mechanism should be activated in Turkey.
- Turkey should remove all the reservations and declarations put in to Convention on the Rights of the Child (CRC), (OP-CRC-AC), (OP-CRC-SC) and (OP-CRC -IC).
- Turkey should remove all reservations put in to International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).
- Turkey should remove the geographical declaration to 1967 Refugee Protocol (1967 Protocol to the 1951 Refugees Convention).

Protection of Human Rights Defenders

On 05.07.2017, during a human rights workshop in Istanbul Büyükada, 10 human rights defenders were taken into custody by Anti-Terror Department of Istanbul Security Department, all remained under custody for 13 days, and later six of them are detained by Peace Criminal Judge although there are no evidence and no reason prescribed in the Penal Procedure Code; and all have been released in the first hearing after spending 100 days under detention. The trial known as Büyükada Trial – Istanbul 10 in the public opinion is still pending. Two of the six human rights defenders who remained without their freedom for 113 days total, are Dr.Günel Kurşun and Mr.Veli Acu who are the board members of HRAA.

The founding president and member of HRAA, Av.Orhan Kemal Cengiz has been tried with three times lifetime imprisonment because of his human rights law practice and

acquitted.

HRAA Representative to Diyarbakır and President of Diyarbakır Bar Association Av.Tahir Elçi has been killed during a press conference in Diyarbakır and the criminal investigation is not finished yet after nearly four years.

In addition to these exemplary cases, the HRA-İHD, HRFT-TİHV, AI-UAÖ and other human rights organizations and their members are struggling with closures, unjust detention and arrests, and illegal searches and seizures. The activities of LGBTI +, women, children and disabled rights associations are banned and members and employees are threatened. Turkey, must put an end to this abusive behavior directed against human rights defenders and must stop being obstacles with unlawful methods to the substantive work of human rights defenders.

RECOMMENDATIONS:

- Turkey, must put an end to arbitrary detention and arrests targeting human rights activists and must stop the harass of rights defenders with illegal methods.
- Turkey, should develop specific policies and should make laws giving full force and effect Declaration International Human Rights Defenders to recognize and protect the work of human rights defenders.
- Turkey, should revise the Turkish Penal Code and the Anti-Terror Law in collaboration with civil society, should refrain from criminalizing legitimate activities of lawyers, human rights defenders, academics, journalists and should repeal all laws and policies that restrict such activities and rights.
- Turkey should ensure not to harass or intimidate of lawyers working in cases involving terror and organized crime or not to expose to inappropriate interventions.
- Turkey, should ensure human rights defenders, academics, and journalists pursue their profession without fear of being subjected to investigation and prosecution. In addition, those who have been unjustly sentenced to criminal prosecution and imprisonment should be entitled to compensation.
- Turkey, should guaranty investigations and prosecutions of all written and verbal assaults directed to the human rights defenders.
- Turkey, should ensure that no one punished for using the rights to freedom of peaceful assembly and association and the implementation of this rights freely without the fear of police attacks.
- Turkey must lift all restrictions on the use of the internet.

Combat with Impunity

There is a close relationship between the use of human rights and the phenomenon of impunity, and the use of rights is only possible through effective investigation of those who violate this right and punishment as a result of a fair trial.

Impunity concept was used for the first time in the decision *Yaşa v. Turkey* by the European Court of Human Rights (ECtHR); during the nineties, it was used to refer to the state's obligation to conduct an effective investigation against the violations of the right to life in the region where the Kurds predominantly lived and in the absence of effective investigation into the perpetrators, it was determined that this would create a vicious circle by exacerbating the climate of impunity and security in the region.

With the Article 1 of the Turkish Penal Code⁵; while the state is given the duty to protect the rights and freedoms of individuals, it is made to punish the perpetrators of the infringement for the realization of this purpose. In other words, the main duty of the state is to protect human rights and freedoms. If the violation of the right is not punished, the right becomes unusable.

A long-standing phenomenon of impunity continues in Turkey have long been available. The incidents of enforced disappearance in the nineties, unsolved murders and non-prosecution of the perpetrators brought up a phenomenon of impunity.

Unfortunately, the recent cases of enforced disappearance and the practice of prosecution, which resulted in impunity, show how phenomenon of impunity has been institutionalized, and how a serious increase in human rights violations will occur if there is no effective struggle.

The number of actors in making impunity a policy is more than one, and the political attitude of all these actors plays an active role in making impunity a policy.

One of the recent cases that have made the phenomenon of impunity visible is the Gezi case and the trial of the perpetrators of those who lost their lives during the exercise of the right to peaceful assembly and demonstration in the Gezi protests.

Despite the fact that the Gezi movement, which has found its place in the public conscience as a mass resistance movement in our country recently, has been subject to lawsuits and prosecutions with heavy imprisonment requests have been opened against the people who used their constitutional rights, the investigation about security forces (Police) that caused the death of a person during these events resulted in impunity.

Ethem Sarısülük died during the Gezi protests in Ankara on 12.06.2013 with a bullet fired from the gun used by the police. The incident was described as "killing by unintentionally crossing the limit of self-defense" with the indictment prepared by the public prosecutor despite the camera footage. The accused police was sentenced to 7 years 9 months 10 days imprisonment at the end of the trial of Ankara 6th Aggravated Felony Court. This conviction was overturned by the Court of Cassation and the case was sent to the main court for retrial. The case was moved from Ankara to Aksaray with security reasons and the decision given as 7 years 9 months 10 days resulted in the imprisonment of 1 year 4 months and 20 days to 10 thousand 100 pounds judicial fine together with the release of the detained police . The decision was finalized by the decision of the Court of Cassation to increase only the judicial fine and to punish 15 thousand 200 liras.

Ethem Sarısülük decision is the sample case on whether and how the phenomenon of impunity in Turkey transforms to impunity policies in cooperation with all institutions of state and institutionalize.

5 TPC Article 1: "The purpose of the criminal code is to protect the rights and freedoms of the people, public order and security, rule of law, public health and environment, community peace and to prevent crime. The law sets out the basic principles of criminal responsibility and the types of offenses, criminal and security measures to achieve this objective."

In this case, the prosecution shows how to protect the police, which is a state power and whose primary duty is to protect human rights and freedoms, and to prepare an indictment that can prevent the provision of justice, even in the case of manslaughter, by the state officer.

It also shows that with the final decision given by the trial authority on this case, the legal definition of the offense may change according to who the offender is. The decisions of judges in the criminal justice system are the guarantee of our freedoms. The understanding of justice distributed according to this type of perpetrator reduces the trust of the society in justice and law.

The multiplicity of actors and causes of impunity requires a multifaceted discussion and comprehension of the strategy to be established in the fight against this phenomenon and, most importantly, a change in the political attitude of the state.

As a result, state interests should not prevent human rights and freedoms, and the state should adopt the principle of punishing the offense and the offender, regardless of the identity of the offender.

RECOMMENDATIONS:

- Effective, independent and impartial investigation mechanisms should be established for human rights violations caused by law enforcement agencies.
- All allegations of ill-treatment and torture by state authorities should be subject to effective and impartial investigation and those responsible should be brought to justice.
- Authorities investigated for alleged human rights violations should be dismissed if convicted.