



**NGO Submission to the United Nations Universal Periodic Review
for the Third Cycle of Turkey**

Prepared and submitted by

Association for Monitoring Equal Rights (AMER)

The Association for Monitoring Equal Rights - AMER) (*Eşit Haklar İçin İzleme Derneği - ESHİD*) was established in October 2010 to monitor and combat discrimination in society, to enable equal rights for each person belonging to disadvantaged groups. AMER carries out all its monitoring and reporting activities in consultation and partnership with national and grassroots civil society organizations (CSOs) which work with various disadvantaged groups including women, persons with disabilities, different ethnic and religious minority groups in different parts of Turkey. AMER has been observing every election since 2011 in terms of equal access of disadvantaged groups within society, as well as reporting discrimination with regards to the enjoyment of human rights. Since 2015, AMER has been the only CSO in Turkey systematically monitoring freedom of assembly. Since 2016, AMER has been working on access to justice for persons with disabilities in Turkey. Prior to this report, AMER has submitted an Alternative Country Report on Turkey for the 21st session of the CRPD, and the 88th CERD Meeting in 2015.

www.esithaklar.org

e-mail: esithaklar@gmail.com, info@esithaklar.org

Phone: +90 212 293 63 77

Non-Discrimination;

Discrimination based on race, ethnic origin, religion or belief

1. Turkey has ratified certain international conventions with reservations, especially the provisions concerning minorities, thereby limiting its obligations arising from these treaties.¹ Per the Treaty of Lausanne 1923, the only minorities recognised by Turkey are Armenians, Greek Orthodox Christians (*Rum*) and Jews. Groups with a significant amount of population in Turkey such as Alevi, Albanians, Circassians, Kurds, Laz, Roma and Assyrians do not hold any official status as minorities.
2. The prohibition of discrimination is contained within some legislation in Turkey and the Constitution² itself. However, these provisions in the Constitution and legislation are merely general equality provisions, are far from the international standards and their scope does not cover all bases of discrimination. For example, ethnic origin is not included in any of the provisions in question, as a basis of discrimination. While the recommendations given on this issue in the 2015 cycle were accepted, there has been no development since then.³ All research conducted on this issue concludes that, discrimination is highly prevalent in Turkey and the most common two bases for discrimination are belief and ethnic origin.
3. The definition of discrimination is not provided by law (direct, indirect discrimination etc.), shifting of the burden of proof is provided only partially by the Labour Law.⁴
4. Penal Code⁵ Art. 122 contains a limited provision on discrimination as a crime.⁶ With the amendment in 2014, the expression “*and such other basis*” was removed (which came after the explicit mention of different bases for discrimination) and “*on ground of hatred*” was added. This amendment has narrowed down the scope of this article, in terms of the bases of discrimination and its application, since proving hatred as a motivation is now required.

¹ UN Convention on Civil and Political Rights Art. 27, UN Convention on Economic, Social and Cultural Rights Arts. 13(3) - (4) and the UN Convention on the Rights of the Child Arts. 17, 29 and 30 are all ratified with reservations concerning ethnic and religious minorities.

² Art. 10 of the Constitution of Turkey states: “*Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.*”

³ UPR 2015 Recommendations, 148.16 (CZ – Czech Republic), 150.26 (NA – Namibia).

⁴ Labour Law No. 4857 Art. 5 prohibits discrimination, however the provision does not extend to job application and recruitment processes.

⁵ Law No. 5237 Penal Code of Turkey

⁶ Penal Code of Turkey Art. 122: Hatred and Discrimination

“(1) Any person who

(a) Prevents the sale, transfer or rental of a movable or immovable property offered to the public,

(b) Prevents a person from enjoying services offered to the public,

(c) Prevents a person from being recruited for a job,

(d) Prevents a person from undertaking an ordinary economic activity

on the ground of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years.”

5. Judicial authorities and national prevention mechanisms, do not conduct effective investigation into alleged cases of discrimination, which then frequently end with impunity for perpetrators. There are still no court decisions on grounds of Penal Code Art. 122, neither are there any Human Rights and Equality Institution of Turkey (TIHEK)⁷ decisions on grounds of discrimination. TIHEK, has recently rejected an application for establishment of a framework to prevent the use of racist and hate speech by political parties, candidates and media outlets in election campaigns in 2019.
6. Disaggregated data on race, ethnic origin, religion or belief is either not collected by the State or not shared with the public. This prevents both the State and Civil Society Organisations from working in a target oriented manner for providing solutions. The policy documents and action plans which have been formed, lack an intersectional approach, their effectiveness and success is highly inadequate. For example, The Strategy Document for Roma People, accepted in April 2016 lacks a section for monitoring its implementation. After its acceptance, problems have not decreased in the areas of shelter, employment, education and discrimination, which the paper focus on.⁸
7. Withholding of official status to places of worship of religious minorities has been in numerous recommendations in the 2015 cycle⁹; but the obstacles in this respect have continued systematically, therefore no progress has been recorded. Mandatory religion classes continue in public schools, however the content does not reflect the diversity of religion or faith in Turkey, and only focuses on Sunni Muslim faith.

Our recommendations;

8. Reservations on: UNCPR Art. 27, UNCESCR Arts. 13(3)-(4) and the UNCRC Arts. 17, 29 and 30 should be lifted.
9. Protocol No. 12 to the European Convention on Human Rights should be ratified.
10. A comprehensive anti-discrimination law should be adopted which includes, the definition, types, basis and penal sanctions for the effective prohibition of discrimination.
11. Claims of discrimination and hate crime should be effectively investigated by judicial and investigative authorities as well as national preventive mechanisms.
12. Disaggregated data should be collected on race, ethnic origin, religion or belief, and shared with the public.
13. Legal amendments should be made to ensure the enjoyment of rights and protections provided by international conventions, afforded to all ethnic and religious minorities.

⁷ Human Rights and Equality Institution of Turkey was established as a National Preventive Mechanism

⁸ Association for Monitoring Equal Rights, "Monitoring Report on Discrimination Based on Race, Ethnic Origin, Religion or Belief" (2018).

⁹ UPR 2015 Recommendations, 149.5 (GR – Greece), 150.35 (AU – Australia). Turkey has stated these recommendations were already implemented or in the process of implementation.

14. Official status should be afforded to places of worship for all religious minorities and it should be ensured that they benefit from the general budget on an equal basis with all groups,
15. Full compliance of the Human Rights and Equality Institution of Turkey and the Ombudsman Institution with the Paris Principles should be ensured, especially in terms of structure and mandate.

Disability Rights

16. Turkey has signed the Convention on the Rights of Persons with Disabilities¹⁰ in 2007, and ratified in 2008. Turkey has no declarations or reservations concerning this particular Treaty. The Optional Protocol has entered into force following signature in 2009 and ratification in 2015.
17. Turkey fails to fulfil many obligations arising from the CRPD. The policies of the State Party on disability are formed on the axis of medical and charity approach. Domestic law has not been harmonised with the Convention, numerous legislation and regulations still contain discriminatory provisions on disability. Discrimination on the basis of disability has been prohibited in the Disability Act¹¹, but no penal sanctions for the perpetrators of discrimination is provided. While Article 122 of the Penal Code contains such penal sanctions, it is only concerning discrimination motivated by hate, which has a rather narrow scope.
18. In Turkey, persons with disabilities, do not have equal opportunity in access to fundamental rights such as education, employment etc. and are subject to discrimination. Women and girls with disabilities as well as LGBTI+ persons with disabilities are subject to multiple discrimination concerning access to human rights. Similarly, persons with disabilities who belong to ethnic and religious minorities are also subject to multiple discrimination.
19. According to official statistics, there are 4.882.841 persons with disabilities in Turkey which constitute %6,6 of the population; %57,2 are women and %42,8 men. While %10,9 men with disabilities are illiterate, this goes up to %32,4 in women. Among persons with disabilities in Turkey, a total of %23,3 is illiterate. Only %2,6 of persons with disabilities continue through higher education. There are no statistics concerning persons with disabilities who belong to ethnic and religious minorities.
20. The Human Rights and Equality Institution of Turkey (TIHEK), which was established as a National Preventive Mechanism and tasked with the implementation of the Convention, is neither in line with the Paris Principles nor an effective mechanism.

Our recommendations;

21. Domestic law of Turkey should be harmonised with the Convention, and the discriminatory provisions contained in Law No. 5147 Art 74(e), Law No. 2802 Art 8(g), and others should be repealed, domestic law should be in line with the Convention's human rights based approach.
22. Penal sanctions for the perpetrators of discrimination should be added to the Disability Act, and effective investigation should be ensured for alleged cases of discrimination,

¹⁰ CRPD/Convention herein after

¹¹ Law No. 5378.

23. Persons with disabilities and Civil Society Organisations should be included in the monitoring of the Convention,
24. Necessary amendments should be made to the Law on Human Rights and Equality Institution of Turkey (TIHEK) for the establishment of an independent national human rights mechanism in line with Paris Principles,
25. Closed institutions (care homes, prisons etc.) are not available for independent monitoring. Therefore, no information is available with regards to the ill treatment or discrimination cases, especially where the public officials working in these institutions are the perpetrators. All closed institutions where persons with disabilities reside should be opened to independent monitoring.
26. For the collection of disaggregated data per the obligations under the CRPD, up-to-date, inclusive and disaggregated data should be collected through a methodology in line with the principle of protection of personal data regarding persons with disabilities, this data should be shared with the public in a transparent matter, and persons with disabilities, DPOs and CSOs should be included in the design of data collection as well as the collection process itself.
27. A plan on access to justice should be developed with a time frame, benchmarks and budget for the implementation of obligations on access to justice in judicial proceedings (including investigation stage), the plan should be shared with the public and implemented with DPOs and CSOs.
28. The quality and number of sign language interpreters working the courts should be improved, a standard should be established in terms of sign language interpreters and such interpreters should be made ready in all judicial proceedings,
29. The guardianship regime per Art. 405 of the Civil Code limits the legal capacity of persons with intellectual and psycho-social disabilities. Relevant legislation should be amended to abolish the guardianship regime and the limitation of legal capacity for persons with disabilities, legislation should be amended to replace this regime with personalised support on decision-making mechanisms which will enable persons with disabilities to utilise their legal capacity.

Freedom of Assembly

30. Article 34 of the Constitution of Turkey¹² which regulates freedom of assembly, is in line with international standards. Law No 2911¹³ is the main legislation which regulates freedom of assembly, however, many other legislation affords numerous powers to public and administrative authorities for restricting freedom of assembly.¹⁴
31. Specifically, the wide scope of the powers afforded to administrative authorities through Laws No. 5442¹⁵ and 2559¹⁶ are used by governorates and district-governorates to restrict assemblies and demonstrations. These restrictions come in many forms such as: restriction of assemblies and demonstrations for a period of time or indefinitely, in the entire province or certain district(s) or even specific bans such as outright banning 1st May celebration demonstrations. The data collected shows that, governorates and district-governorates, in 2016 have issued a total of 101 restriction decisions in 37 provinces whereby 52 of them are specific and 49 of them are general in scope. In 2017, there were a total of 120 decisions issued in 32 provinces, whereby 47 of them are specific and 73 of them were general. Finally, in 2018 there were a total of 127 decisions in 38 provinces, whereby 63 of them specific and 64 of them were general in scope. These decisions to restrict and/or ban the enjoyment of freedom of assembly do not have any basis in a court decision, and in the relevant legislation, there is no provision found to prevent the arbitrary use of these powers. For example, in Gaziantep province, within the 17-month period between January 2017 – May 2018, there were only 45 days without a restriction on freedom of assembly.¹⁷
32. Additional to the above mentioned powers, governors have been implementing the notification requirement which is set out in Law No. 2911, as a “mandatory permission requirement”. Security forces use this “mandatory permission requirement” which is not found anywhere in the Constitution or the legislation as a justification for interfering with peaceful assemblies and demonstrations. Further, disproportionate use of force in interference with peaceful assemblies and demonstrations has been observed in almost all cases. Law No. 4483¹⁸ requires a permission to be obtained from the governor, before a criminal investigation is launched into the actions of security forces while they were on duty. Governorates withhold this permission for judicial authorities to investigate claims on the use of disproportionate force by security forces and this, almost always results in impunity for cases of use of disproportionate force.

¹² Art. 34 of the Constitution of Turkey states: “Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others. The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.”

¹³ Law No. 2911 on Assemblies and Demonstrations.

¹⁴ Law No. 5442 on Provincial Administration, Law No. 2559 on Police Duties and Responsibilities, Law No. 2935 on State of Emergency and Law No. 5326 on Misdemeanours.

¹⁵ Law No. 5442 on Provincial Administration.

¹⁶ 2559 on Police Duties and Responsibilities.

¹⁷ Association for Monitoring Equal Rights, Freedom of Assembly Monitoring Report (2017) and (2018)

¹⁸ Law No. 4483 on Litigation of Civil Servants and Other Public Officials

Our recommendations;

33. The powers afforded to governorates for banning assemblies and demonstrations in an entire province should be abolished, however this competence should be amended to only be reinstated during state of emergency conditions with a court decision.
34. Relevant legislation should be amended to prevent arbitrary use of powers by public authorities in regulating freedom of assembly,
35. The notification requirement contained in Law No. 2911 is aimed to protect assemblies and demonstrations as well as their participants. Relevant legislation should be amended to prevent the arbitrary implementation of the notification requirement as a “mandatory permission requirement”.
36. The provisions which pave the way for impunity, in Law No. 4483 on Litigation of Civil Servants and Other Public Officials should be amended, the requirement to obtain permission should be abolished for public officials including security forces for the effective investigation for human rights violations claims,
37. The “Law Enforcement Monitoring Commission” which has been established in 2016 through legislation, is not independent of the executive, neither it is authorised to start an investigation on its own. This Commission should be reformed and its effective operation should be ensured according to international standards,
38. While there are no explicit provisions concerning assemblies and demonstrations in Law No. 5326¹⁹, certain provisions are used by administrative authorities in an arbitrary manner to create chilling effect for fining demonstrators, this practice should be abolished.
39. Relevant amendments should be made in legislation to prevent public authorities and public officials’ discriminatory attitudes towards assemblies and demonstrations through indicators such as, the subject of a demonstration, purpose, political inclinations of the organisers etc.
40. Relevant amendments should be made to facilitate on site monitoring of assemblies and demonstrations for journalists and CSOs.

¹⁹ Law No. 5326 on Misdemeanours

Right to Vote and Be Elected

41. Turkey's electoral legislation is not fully harmonised with international standards yet. The %10 general election threshold is still in force, which impedes fair representation and foundation of pluralistic political environment. Some provisions in the electoral legislation put small political parties and independent candidates at a disadvantage. Voter registration is formed through an address based system which violates the right to vote for homeless people and women in shelters. Right to vote for persons with intellectual disabilities are de facto not acknowledged. The trainings on electoral process organised by the Supreme Board of Elections(SBE) which target citizens, are only in Turkish. Lack of education in other languages is a violation of rights for people from different ethnic groups.
42. The institution responsible for organization and conducting elections in Turkey is the Supreme Board of Elections (SBE) which consists of 11 high judges and political party representatives in the parliament. Per the Constitution, decisions taken by the Board is final and cannot be appealed in higher body.
43. However, the SBE decisions disregard international conventions on the right to vote and to be elected, and in some cases decisions are taken contrary to electoral laws.²⁰ Many decisions by the SBE create double standards.
44. Turkey imposes blanket ban on voting for all convicted prisoners, without regard to the nature and gravity of the crime, the length of imprisonment and the conduct of the convicted person. In *Söyler v. Turkey*²¹, the ECtHR²² found Turkey to be in violation of Article 3 of Protocol 1 to the Convention²³, which guarantees the right to free elections. However, since then, no amendment has been made on the law in question which still fails to meet the criteria.

Our recommendations;

45. There is currently no mechanism to provide for the transparency and effective audit of the electoral expenses of political parties and candidates. To ensure the public's right to know and transparency of electoral expenses, legal amendments should be made and effective mechanism should be established;
46. Turkey, with its 10%, has the highest electoral threshold compared to European Union members. For ensuring a democratic society and fair representation, relevant legislation should be amended for levelling it down to the EU countries' percentage or it should be abolished;

²⁰ Decision No. 3 dated 02.01.2019 by the SBE has provided mobile ballot boxes only to patients and persons with disabilities living at provincial and district centres, but not to those who are living at towns and villages, despite no geographic limitation being defined within the legislation.

²¹ *Söyler v. Turkey*, App. no: 29411/07, Judgment of 17 September 2013.

²² European Court of Human Rights

²³ European Convention on Human Rights

47. Legal amendments should be made to allow affected voters to appeal to the SBE decisions in the Constitution Court
48. Legal amendments should be made to adopt an alternative voter registry for inclusion of homeless people and those living in shelters, whose right to vote is violated due to the address based system;
49. Necessary legal amendments should be made and voter trainings should be carried out in all languages spoken in Turkey²⁴;
50. Enjoyment of the right to vote should be ensured for persons with intellectual disabilities;
51. Necessary legal amendments should be made to effectively prevent unfair use of public resources and authority for or against of political parties;
52. Legal amendments should be made and a monitoring mechanism should be established to prevent use of racist/discriminatory and hate speech in election campaigns by political parties, candidates or media outlets;
53. Legal regulations should be amended to allow convicted prisoners to vote in accordance with the nature and gravity of the crime, the length of imprisonment;
54. Necessary measures should be taken to ensure persons with disabilities can vote by themselves and under secrecy. Expenses of necessary arrangements should be covered by the State;²⁵
55. Decisions of the SBE to be published in the Official Gazette is a legal requirement, however, this requirement is not fulfilled in reality, in the Gazette or its website. Necessary legal amendments should be made for the SBE to share its decisions on electoral process with public, in accessible formats;
56. The SBE rejects accreditation requests by election observers for independent electoral monitoring. Legal amendments should be made for affording a status to election monitors.²⁶

²⁴ According to the decision no. 1040, dated 27.05.2015 by the SBE, where the claimants are two Kurdish women who do not speak Turkish, the decisions states that necessary information on voting process would be given to non-Turkish speakers through support of translator at ballot box. However, this decision has never been implemented. Our association's requests for the implementation of this decision at elections and referendum took place at 2017, 2018 and 2019 have been rejected by the SBE.

²⁵ The SBE has taken a decision of accepting a request made by a CSO on use of ballot template paper, while rejecting its request that expenses of the implementation should be covered by the SBE.
<http://ysk.gov.tr/doc/karar/dosya/77913/2018-1103.pdf>

²⁶ Ten different electoral monitoring accreditation requests made by our association since 2011, were rejected by the SBE.