



HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE

THE REPORT ON PROTECTION AND PROMOTION OF HUMAN RIGHTS 2020



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ABBREVIATIONS

CC	Constitutional Court
EBA	Education Information Network
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FETO/PSS	Fethullahist Terrorist Organization / Parallel State Structure
GNAT	Grand National Assembly of Türkiye
HREIT	Human Rights and Equality Institution of Türkiye
ME	Ministry of Education
MFSS	Ministry of Family and Social Services
NHRI	National Human Rights Institution
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
OI	Ombudsman Institution
OPCAT	Optional Protocol to Convention against Torture
SOE	State of Emergency
ŞONİM	Violence Prevention and Monitoring Centers
TURKSTAT	Turkish Statistical Institute
UNICEF	United Nations Children's Fund
UN	United Nations
WHO	World Health Organization



FOREWORD

In order for the obligation of ‘protecting, respecting and fulfilling’, which is undertaken by human rights, to be done, many national and international norms have been created, and many international institutions and organizations have been established within this scope. One of these institutions is the institutional structures that started to become widespread after the Second World War and are accepted as “national human rights institutions (NHRIs).”

Particularly in the last quarter of the twentieth century, it has become necessary to determine the minimum criteria regarding both the institutional structures and the roles assumed by the NHRIs, which started to become widespread in various forms and levels. In this context, “Principles Relating the Status of National Institutions Established for the Promotion and Protection of Human Rights” or commonly known as “Paris Principles” were adopted by the United Nations (UN) General Assembly in 1993. The aforementioned Principles have started to be used as standard norms in the accreditation of national human rights protection

mechanisms. Thus, the 1993 World Conference on Human Rights held in Vienna became a turning point for NHRIs. For the first time, NHRIs in line with the Paris Principles were officially recognized as important and constructive actors in the promotion and protection of human rights, and the establishment and strengthening of these mechanisms was encouraged.

It is important to implement and operationalize the universal human rights principles developed within the framework of the basic issues of human rights thought more effectively. In recent years, many regulations have been implemented in Türkiye in order to arbitrate the national order of rights and freedoms in line with the principles of “democracy and the rule of law.” All these arrangements for the more effective implementation of human rights can be considered as a positive step in terms of human rights policy. However, it is necessary to make additional arrangements that will strengthen a more inclusive system of rights and freedoms on the basis of human rights and to monitor the effectiveness of the implementation. As a national human rights institution, the Human Rights and Equality Institution of Türkiye (HREIT) carries out its activities in these three main areas within the framework of its mission of ‘protecting and promoting human rights, working to ensure the right of people to be treated equally, fighting against torture and ill-treatment effectively’.

This report, prepared pursuant to; at the international level, Article 3 of the Paris Principles “*Giving opinions, recommendations, recommendations and reports to the government, parliament and all other relevant bodies, at their request or on their own initiative, on matters relating to the promotion and protection of human rights*”; At the national level, Article 9 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye, titled “Duties of the Institution,” “*Preparing reports to be presented to the Presidency and the Presidency of the Grand National Assembly of Türkiye, in the fields of protection and promotion of human rights, combating torture and ill-treatment and combating discrimination.*” and “in the Human Rights Action Plan dated March 2, 2021 as a political commitment; “*Türkiye Human Rights Report will be prepared and shared with the public every year.*”¹¹”

First of all, this report identifies the current problems regarding certain rights and freedoms in our country in 2020. Afterwards, solution suggestions are given for the problems arising from the application in the areas of rights and freedoms determined. In addition, the measures taken during the pandemic period are being evaluated on the basic norms of the classical human rights doctrine such as “freedom-security balance; the principle of legality the principle of proportionality and the principle of appropriateness.”

In this report, which was prepared on the basis of participatory stakeholder and with a pluralist methodological approach; the opinions and evaluations of relevant public institutions, universities, non-governmental organizations (NGOs) and other stakeholders are included.

1 Ministry of Justice, Human Rights Action Plan and Implementation Calendar, April 2021, p. 128,

For this purpose, the problems experienced in the field of human rights and solutions for these problems were requested from the relevant stakeholders.

The “2020 Report on the Protection and Promotion of Human Rights”, prepared within the framework of this methodology, aims to objectively determine the current situation of Türkiye in terms of the catalog of rights and freedoms and to create a future perspective on problem areas. I would like to express my gratitude to the valuable members of all public institutions, NGO representatives, academics and valuable personnel of our institution who contributed and supported the reporting process with their views and evaluations on the basis of a pluralist methodological approach and participatory stakeholder partnership.

Prof. Dr. Muharrem KILIÇ
Chairman





1. INTRODUCTION

- 1.1. Legal Basis
- 1.2. Method and Constraints

01

BÖLÜM

1. INTRODUCTION

Prepared by the HREIT, this report aims to determine the current situation in Türkiye regarding fundamental human rights, especially the right to life, through principles and values such as the rule of law, accountability and transparency, and to create a solution perspective for the problem areas related to the relevant right categories. In the frame of reference of the report, priority problem areas that should be considered in the focus of human rights are included. In this respect, the report presents a framework that includes both the identification of problem areas and the development of solutions for these problem areas.

1.1. Legal Basis

The “k” clause of the first paragraph of the 9th article titled “Duties of the Institution” of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye contains the provision of; *“To prepare annual reports in the areas of, protection and promotion of human rights, fight against torture and ill-treatment and anti-discrimination to be submitted to the Presidency and the Presidency of the Grand National Assembly of Türkiye”*¹ and Article 3 of the Paris Principles states; *“It provides opinions, recommendations and reports to the government, parliament and all other relevant bodies, at their request or on their own initiative, on matters related to the promotion and protection of human rights.”*² This reporting was carried out by HREIT within the scope of the performance of the relevant institutional duty.

1.2. Method and Constraints

The data included in the report and forming the basis for the evaluation were obtained from the sources presented by diversified stakeholders. In this context, the information and documents that HREIT obtained from the relevant stakeholders during its work, the information and documents obtained from public institutions and organizations, the outputs obtained from the studies of national and international NGOs, and the reports and evaluations of the international organizations that we are a party to constitute the references of the reporting process. In addition to the aforementioned information and documents, the statements of the relevant persons and the information obtained from the press and media organizations were also taken as reference.

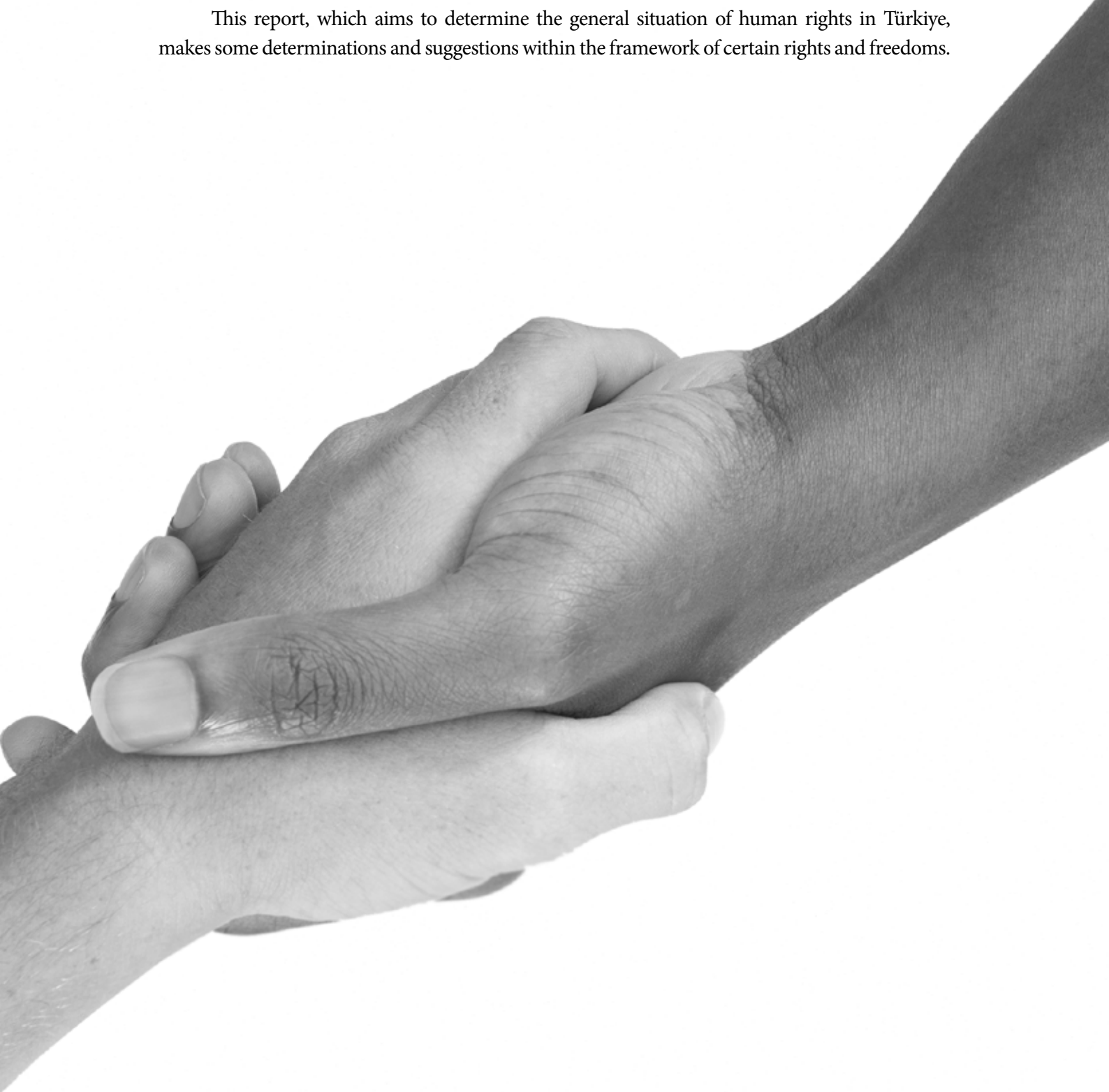
As a basis for the evaluations in the report, evaluations of current and potential human rights problems in their fields of duty and/or work from relevant public institutions, NGOs

1 Turkish Human Rights and Equality Institution Law No. 6701 dated 2016, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf> Access Date 05.08.2021

2 UN The Paris Principles, Adopted by General Assembly Resolution 48/134 of 20 December 1993, <https://www.un.org/ruleoflaw/files/PRINCI-5.PDF>, Access Date: 05.08.2021.

working on the subject and academics working in the field of human rights, and solutions based on scientific data on these problem areas and information, documents and statistics were requested with suggestions. However, the expected level of data flow, especially from NGOs, has not materialized.

This report, which aims to determine the general situation of human rights in Türkiye, makes some determinations and suggestions within the framework of certain rights and freedoms.





2. HUMAN RIGHTS IN TÜRKİYE: 2020

- 2.1. Right to Life
- 2.2. Prohibition of Torture and Ill-Treatment
- 2.3. Immigration and the Right to Asylum
- 2.4. Right to a Fair Trial
- 2.5 Freedom of Expression and Association
- 2.6. Right to work
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- 2.16. The Legality of the Measures Taken in the Fight against the Covid-19 Pandemic
- 2.17. Administrative Claim Mechanisms and Effectiveness

02

BÖLÜM

2. HUMAN RIGHTS IN TÜRKİYE: 2020

2.1. Right to Life

The right to life expresses the essential value that the democratic social order envisages as a protection and assurance mechanism. International human rights acquis³ imposes a contractual obligation on states in terms of this fundamental human right that should not be suspended even in war or any other emergency situation. The said negative obligation corresponds to the state's responsibility to avoid actions that violate the right to life, which is an essential value in terms of personal rights. In addition, states have positive obligations regarding the protection of this fundamental right, for which a guarantee mechanism is envisaged on the basis of 'law'. European Court of Human Rights (ECHR) interprets Article 2 of the European Convention on Human Rights (ECHR); in a way that imposes three types of obligations on the state: 'obligation not to kill' 'obligation to protect life' and 'obligation to investigate death'.⁴ Necessary arrangements have been made in our national legal system to arbitrate the right to life within the framework of the aforementioned obligations. Although regulations are made on the basis of legislation regarding the relevant right area, it is necessary to point out the problem areas arising from the application.

As given in the graphic below, while there were four violation judgments against Türkiye under Article 2 of the ECHR in 2019 the ECtHR, no violation decision was made regarding the relevant right category in 2020.

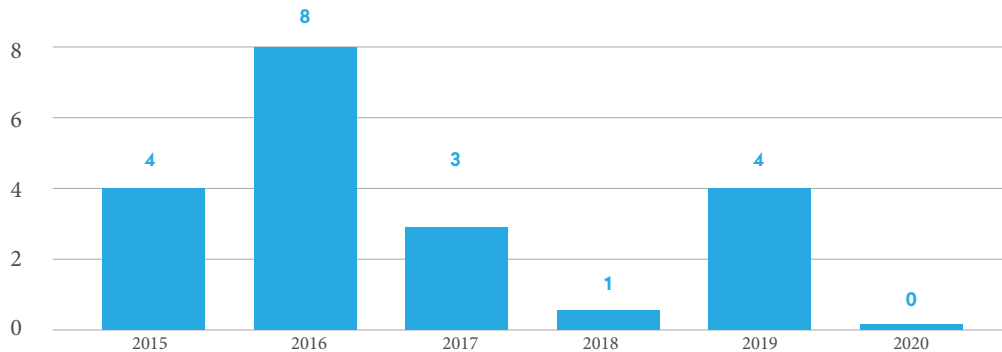


Chart 1: Decisions of the ECtHR on Violation of the Right to Life by Years⁵

3 ECHR art. 2: "Everyone's right to life is protected by law. No one's life may be deliberately put to an end, except for the execution of this sentence, which has been sentenced by the court, for an offense punishable by the law with the death penalty"
TR Constitution m. 17: "Everyone has the right to live, to protect and develop their material and spiritual existence."

4 Doğru, Osman, Right to Life, Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi - 5, Avrupa Konseyi 2018, p. 3.

5 ECHR art. 2: "Everyone's right to life is protected by law. No one's life may be deliberately put to an end, except for the execution of this sentence, which has been sentenced by the court, for an offense punishable by the law with the death penalty"

Another problem area that needs to be examined within the scope of the right to life is about ‘earthquake-related death and injury cases’ in 2020. The earthquakes that took place in Elazığ and İzmir in 2020 once again revealed the fragile nature of Türkiye, which is located in the earthquake zone. According to US Geological Survey (USGS) data⁶, two of the four earthquakes in which 10 or more people died in 2020 all over the world took place in Türkiye and 160 people lost their lives in these earthquakes in our country. In our country, approximately 700,000 buildings, which were considered to be unstable, were demolished after 2012.⁷ These numbers are an important effort in the fight against earthquakes and the production of earthquake-resistant housing. However, despite all these efforts, ‘not taking sufficient preventive measures at the point of combating earthquakes, problems regarding building safety and the lack of deterrent penalties’ constitute the main reasons for the violations caused by the earthquake. When all these problem areas are taken into account, both the central government and local governments should primarily do the necessary studies in the fight against earthquakes. There are many regulations that need to be made, from earthquake-related legislative studies to building safety, from awareness-raising activities to preventive mechanisms.

Another problem area that should be examined within the scope of the report is the phenomenon of violence against healthcare workers, which cannot be prevented despite all administrative and legal measures and awareness efforts. The fact that healthcare workers, who are at the forefront of the fight against the Covid-19 pandemic, are still exposed to acts of violence, shows that more effective and preventive measures should be taken at the point of combating violence. In order to prevent violence against healthcare workers, the regulation that envisages amendments in the Health Services Basic Law dated 7 May 1987 and numbered 3359, came to the agenda of the Turkish Grand National Assembly (GNAT) and entered into force after being published in the Official Gazette on 17 April 2020. Although the said law is a meaningful step in this process, it is necessary to evaluate the preventive policies to be developed in order to eliminate violence against health workers in a wide range from security to education, from working conditions to legal framework. At this point, increasing security measures and imposing more deterrent penalties should be considered.

The Covid-19 pandemic, which emerged in the city of Wuhan, China and affected all the countries of the world in a relatively short period of time, caused a large number of infected cases and deaths on a global scale. As in the whole world, the devastating effect of this pandemic has deeply affected our country. Due to the pandemic, millions of people have been infected and 52,703 people have died as of August 2021, when this report was written.⁸

6 <https://www.usgs.gov/> , Access Date: 10.08.2021.

7 www.csb.gov.tr , Access Date: 10.08.2021.

8 <https://corona.cbddo.gov.tr/Home/DeathConfirmedRatio> , Access Date: 13.08.2021.

The crisis period brought about by the pandemic further aggravates the balance sheet of human rights violations, especially for vulnerable segments. Necessary measures have been taken to protect the rights of citizens and foreigners in order to minimize the devastating effect of the pandemic period on rights and freedoms. Türkiye's 'health reform' policies, especially in the last 15 years, have led to a positive separation from countries such as America and many European countries at the point of minimizing the devastating effects of the pandemic.

A situation that leads to the most intense violation of the right to life is experienced as a result of terrorism. The work carried out within the scope of the fight against terrorism, from security measures to the prevention of terrorist activities, is of great importance in terms of protecting the right to life. Despite the terrorist violence it has been exposed to within the framework of its geopolitical and geostrategic dynamics, Türkiye has minimized human rights violations, especially violations of the right to life, due to terrorism, thanks to effective prevention mechanisms. Detailed evaluations on the subject will be given under the heading of the fight against terrorism.

Another problem area that should be dealt with, within the scope of the right to life is death events resulting from work accidents. As we pointed out in the 2019 report, deaths and injuries resulting from work accidents have an indirect impact on the rights of family members as well as the person's right to life and material integrity. According to the data announced by the Social Security Institution, 1236 employees lost their lives as a result of work accidents in 2020. Compared to the previous year (1147 in 2019), the number of deaths increased by approximately 7%.⁹

Deaths caused by drugs constitute another problem area that should be addressed within the scope of the right to life. Effective measures taken by law enforcement forces had a positive impact on the number of drug-related deaths. As a result of the effective measures taken, deaths due to drug use have shown a regular downward trend over the years. According to the "Türkiye Drug Report 2021" data prepared by the Department of Combating Narcotic Crimes, the number of deaths due to drug use was 342 in 2019, while this number decreased to 314 in 2020.¹⁰

9 www.sgk.gov.tr , Access Date: 26.09.2021.

10 GDS, "Turkey Drug Report 2021", GDS Publication Catalog No: 736, NDB Publications: 33, Publication No: 2021/7, Ankara 2021, 1st Edition.

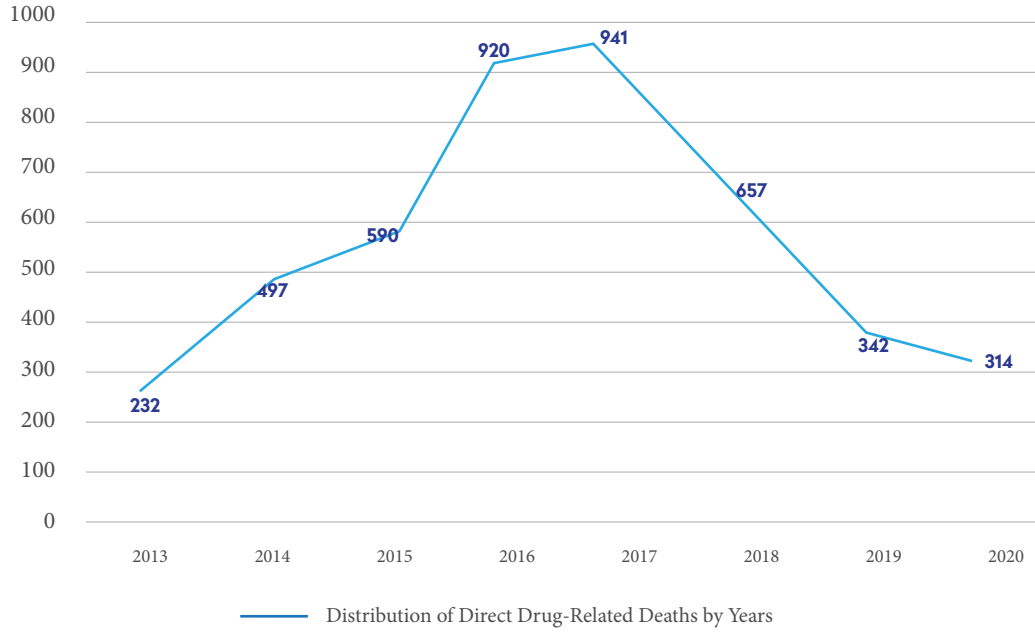


Chart 2: Distribution of Deaths Caused Directly by Drug Substances by Years¹¹

2.2. Prohibition of Torture and Ill-Treatment

“Torture; means an act that causes physical or mental pain or suffering, applied consent or encouragement of a public official or any other person acting in that capacity for the purpose of punishing a person or a third party for an act committed or suspected of having committed, to obtain information or a confession, or for any indiscriminate reason. This does not include pain and suffering that is merely natural or accidental arising from the application of legal sanctions”¹²

Torture is absolutely prohibited in order to protect individuals from torture and ill-treatment and to prevent torture and ill-treatment in this context.

As stated in many decisions of the ECHR, “Article 3 constitutes one of the most fundamental values of democratic societies.”¹³ According to Article 3 of the ECHR, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” In this context, when the distribution of the decisions taken by the ECtHR against Türkiye within the scope of Article 3 of the ECHR is analyzed over the years, it is seen that there has been a decreasing trend especially in the last 10 years. So much so that while there were 3 violation decisions regarding the prohibition of torture in 2010, no violation decision was made between 2016-2020. While there were 12 violation decisions regarding the ban on ill-treatment in 2019, there were 2 violation decisions in 2020.¹⁴

¹¹ “It been prepared based on the data of the “Turkey Drug Report 2021”.

¹² 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. one.

¹³ Reidy, Aisling, Prohibition of Torture, Human Rights Handbooks, No.6, Council of Europe 2002, p. 10.

¹⁴ <https://inhak.adalet.gov.tr/Home/BilgiDetay/10>, Access Date: 13.08.2021.

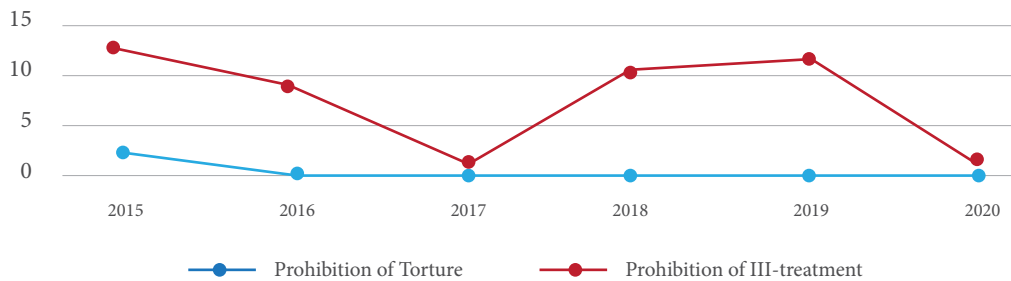


Chart 3 : Decisions of the ECtHR on Violation of Article 3 by Years¹⁵

In order to combat torture and ill-treatment effectively, an independent organization is required to act as a ‘National Preventive Mechanism’ (NPM) under the Optional Protocol to the 2006 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT). The OPCAT, which was adopted in 2002 and signed by Türkiye in 2005, came into force in 2006 after the minimum number of states envisaged for enforcement became a party. The duty of NPM is firstly by an administrative decision; It was given to HREIT with the decision of the Council of Ministers dated 28.01.2014. With the HREIT Law No. 6701, this duty has been counted among the duties of HREIT with the provision of law.

HREIT conducts regular, informed or unannounced visits to places where people deprived of their liberty or taken under protection are found. These visits, which are carried out in order to prevent torture and ill-treatment, to improve the conditions of the places of detention and the treatment of those detained in these places; ‘to observe and evaluate the conditions prevailing in places of detention and the treatment of detainees; follow-up visits in places of detention that were visited before, to see the developments after the visit and to determine whether torture and ill-treatment were made to the people interviewed after the visit; It covers all visits, whether informed or unannounced, to examine allegations and applications regarding torture and ill-treatment.’¹⁶

In the selection of places of detention to be visited, criteria such as the intensity of the complaints of the detainees and the geographical balance are taken into account. Although the visits can be announced or unannounced, the unannounced visit method is mostly preferred. The findings and observations obtained as a result of the visits are reported and recommendations are presented to the relevant institutions.

The Covid-19 pandemic is having a particularly negative impact on persons held in places of detention or protected areas. Considering the risk level of transmission of Covid-19

¹⁵ Prepared on the basis of data published by the Ministry of Justice, Department of Human Rights.

¹⁶ National Preventive Mechanism Against Torture and Ill-Treatment 2019 Report, p. 49.

in closed spaces, “first do no harm!” (primum non nocere) principle should be kept in the foreground.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹⁷ recommended that states provide alternative measures to deprivation of liberty to reduce overcrowding in penitentiary institutions. In line with these recommendations, in order to prevent the spread of the pandemic due to overcrowding in penitentiary institutions, “The Law on the Amendment of Some Laws and the Law on the Execution of Penalties and Security Measures dated April 15, 2020 and numbered 7242¹⁸ was published in the Official Gazette and entered into force. Under the aforementioned law, convicts who are in open penitentiary institutions or who are granted the right to leave open penitentiary institutions, and convicts whose sentences have been decided to be executed by applying the measure of probation have been sent to Covid-19 leave. Accordingly, 64,661 convicts were sent for Covid-19 leave; A total of 42,736 convicts, 30,358 from open penal execution institutions and 12,378 from closed penal execution institutions, were sentenced to be executed by means of probation; It was decided to release on conditional release a total of 6,834 convicts, 4,246 from open penal execution institutions and 2,588 from closed penal execution institutions.¹⁹ The aforementioned change has not been applied to those convicted of terrorism offenses, crimes committed within the scope of organizational activities and crimes committed against sexual immunity, those who repeat for the second time, and those whose sentence is executed due to the revocation of the conditional release decision.

NPMs envisioned by the OPCAT are required to continue their visits, even in times of emergency. According to article 14/2 of the OPCAT, “A visit to a particular place of detention may be objected to only on the ground that urgent and compelling reasons arising from national defence, public safety, natural disaster or serious disorder in the place to be visited temporarily preclude such a visit.” In this context, NPMs need to adapt their working methods to the situation caused by the pandemic in order to protect citizens, place of detention personnel, detainees and themselves.²⁰

With the increasing number of cases due to the pandemic, HREIT has reduced the frequency of its visits within the scope of its NPM duty, observing the principle of not harming detainees and personnel. However, during the pandemic period, both visit and information activities continued uninterruptedly.

17 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty In The Context Of The Coronavirus Disease (Covid-19) Pandemic”, 20 March 2020, <https://rm.coe.int/16809cfa4b>

18 <https://www.resmigazete.gov.tr/eskiler/2020/04/20200415-16.html>, Access Date : 22.08.2021.

19 Ministry of Justice, Public Statement on the Covid-19 Pandemic Process in Penal Institutions, <https://cte.adalet.gov.tr/Home/SayfaDetay/ceza-in-faz-kurumlarinda-kovid-19-pandemi-surecine-dair-public-declaration17062020045113>, Access Date: 27.08.2020.

20 SPT, Recommendations to States Parties and National Preventive Mechanisms Regarding the Covid-19 Pandemic, <https://www.tihek.gov.tr/covid-19-salginiyla-mucadelede-ulusal-onleme-mekanizmasi-ve-insan-haklari/>, Access Date: 06.09.2020.

Some images allegedly associated with two citizens named Osman Şiban and Servet Turgut, who were detained on September 11, 2020, in the Çatak district of Van, were reflected in the press. It was announced that Servet Turgut, who was taken into custody, died 19 days after the incident in the hospital where he was treated. It is important that this issue, which is heavily involved in the national and international public opinion, is handled with all its aspects, an effective investigation is carried out in administrative and judicial terms, and there is no unanswered question in the public opinion.

2.3. Immigration and the Right to Asylum

Due to its geopolitical position, Türkiye is exposed to an intense wave of migration. Causes such as ‘war, conflict, economic deprivation and natural disasters’ cause people to migrate from their country of residence to another country. The Syrian Civil War, which broke out in 2011, has caused our country to be exposed to an intense wave of migration. The mass migration caused by this civil war has caused our country to encounter an influx of refugees. Türkiye has played a critical role in protecting all these vulnerable groups, especially the right to life, from human rights violations. So much so that, Türkiye, which hosts 3,696,919²¹ . Syrians came to our country with security concerns due to the civil war since 2011, is positively differentiated from other countries.

Türkiye announced in February 2020 that it will not “stop the asylum seekers who want to cross into Europe”. Thus, hundreds of thousands of irregular migrants from different parts of our country moved to the Greek border and gathered in and around Edirne province. A large number of refugees and asylum seekers, including children, tried to cross to Greece via the Evros River. Refugees concentrated at Pazarkule Border Gate faced excessive use of force by Greek law enforcement. This attitude of the Greek security forces, which intervened uncontrolled and disproportionately with gas bombs and batons, is not compatible with universal human rights principles. It is obvious that the inhuman interventions in question create new traumas for the refugees when they leave their country due to force majeure.

HREIT conducted inspections at the border with a special committee to monitor the situation of asylum seekers whose human rights, especially torture and ill-treatment, were violated. As a result of the examination, it was noted that the Greek security forces’ intervention against asylum seekers, such as pregnant, child, elderly and people with disabilities, without any discrimination, violated the prohibition of torture and ill-treatment guaranteed in universal, regional and national norms. It has been observed that the Greek law enforcement forces carried out intensive interventions with live bullets, rubber bullets and tear gas. It is obvious that these interventions are injurious to human rights and human dignity.

21 For official data of the Directorate General of Migration Management, see <https://www.goc.gov.tr/#> , Access Date: 09.08.2021.

Another problem area that should be evaluated within the scope of the report is about meeting the daily needs of asylum seekers. At this point, both public institutions, NGOs and civil citizens have carried out some aid activities in order to meet the daily needs of asylum seekers.

Refugees are one of the groups made even more fragile by the Covid-19 pandemic. Their massive and intense coexistence, especially at the border, and their lack of access to regular and adequate health services at any time; The fact that they are largely deprived of adequate and balanced nutrition makes this group even more vulnerable. At this point, it should be noted that the measures taken are insufficient.

After Türkiye opened its borders to refugees, Afghan national Şefika Nazari, who applied to HREIT about her two children, with whom she was separated due to the turmoil caused by the Greek police's intervention, while they crossed the Evros River and crossed to Greece, was reunited with her children as a result of the diplomatic relations of our Institution.²²

1.6% of Syrians under temporary protection reside in temporary shelter centers, and 98.3% reside outside of temporary shelter centers. The total capacity of temporary accommodation centers is 95,789.²³ The total number of people sheltered in removal centers in 2020 was recorded as 100,858. The numerical data regarding the countries of citizenship of these foreigners (the 10 most populated countries) are listed as follows: 38,725 of them are Afghanistan; 14,168 are Pakistani; 13,601 are Syrian; 4,693 are Iraqi; 3,445 of them are Iranian; 3,088 are Somalis; 3,083 of them are Morocco; 3,002 of them are from Uzbekistan; 2,815 of them are Bangladeshi and 1,537 Congo nationals.²⁴

Considering the official data, it is observed that there is no overcrowding problem in the shelter centers. Observations made during the visits made by HREIT show that the needs of the refugees staying in the camps are met at the maximum level. It has been observed that necessary services are provided in areas such as education, health, social integration and employment for the people staying in the camps.²⁵

HREIT has reduced the frequency of visits in order not to risk the health of both its staff and those under administrative detention during the Covid-19 pandemic. During the visit made to Ankara Akyurt Removal Center in 2020, it was observed that the isolation rules were followed and the crowding was tried to be prevented as much as possible, but it was observed that the protective equipment, especially the mask, was not provided at a sufficient level.²⁶

22 <https://www.tihek.gov.tr/yunanistanda-kalan-cocuklarina-kavusan-afgan-aileden-tiheke-tesekkur-ziyareti/> , Access Date: 17.02.2021

23 General Directorate of Migration Management, <https://www.goc.gov.tr/#> , Access Date: 10.08.2021

24 For relevant numerical data, see <https://www.goc.gov.tr/#> , Access Date: 09.08.2021.

25 For detailed information, see www.tihek.gov.tr, Access Date: 09.08.2021

26 HREIT, Akyurt Removal Center Visit Report, Report No: 2020 / 20, October 2020. https://www.tihek.gov.tr/upload/file_editor/2021/07/1625130267.pdf Access Date: 04.08.2021

Another problem area that needs to be addressed for foreigners is ‘restriction codes.’ States have wide discretion in the entry and residence of foreigners in order to protect public order and public safety. The difficulty of accessing qualified information and documents, especially regarding foreigners who have entered or will reside in the country, expands the discretionary power of the states in the transactions to be made. However, wide discretion should be exercised in a way that does not lead to ambiguity, and the limits of this power should be clearly stated. The ambiguity of the limits of the discretion leads to the inability to establish the integrity of the rules at the point of banning the entry of foreigners into the country or deporting some foreigners in the country. The fact that law enforcement officers take a more security-friendly approach in events that threaten “public order and public security” and sometimes the courts decide without adequate examination constitutes a fundamental problem in terms of the implementation of the ‘restriction code.’²⁷ Since the extremely vague and abstract nature of the restriction codes for foreigners gives the administration a wide margin of appreciation, it is important to establish a reasonable balance between public order and public safety issues and fundamental rights and freedoms regarding the implementation of these codes.

One of the most vulnerable areas in the face of the global crisis created by Covid-19 is the education sector. The distance education applications created by the pandemic process have targeted the access of education services to all generations of education age on the basis of equality. However, the pandemic period has brought with it difficulties in accessing education services. One of the groups that cannot benefit from the said educational opportunities is refugee children.²⁸ A study published during the pandemic period reveals that 48% of children enrolled in school cannot participate in distance education. In the related study, it is stated that 63% of the participants have difficulty in reaching food and 53% of them have difficulty in reaching basic hygiene requirements. Similarly, with the onset of the pandemic, one of the first groups to experience victimization in working life was asylum seekers. The rate of non-working people, which was 18% in the pre-pandemic period, reached 88% during the pandemic period.²⁹

27 For detailed information, see Mazlum-der, “Victims of the Restriction Code Report”, İstanbul 2020.

28 The concept of refugee is used as an umbrella concept to express the actual situation, not the legal situation.

29 Association for Solidarity with Asylum Seekers and Migrants, Sectoral Analysis of the Effects of the Covid-19 Outbreak on Refugees in Turkey, Ankara 2020.

Another problem area regarding the rights of asylum seekers is access to justice services. Asylum-seekers' access to justice is indirectly guaranteed in international conventions such as in particular the 1966 UN Convention on Civil and Political Rights³⁰ Covenant on Economic, Social and Cultural Rights³¹ Convention on the Elimination of All Forms of Racial Discrimination³² and the Convention on the Elimination of All Forms of Discrimination against Women³³ The problem of access to justice services, which HREIT observed during its visits and reflected in its reports, constitutes a fundamental problem for asylum seekers. At the point of eliminating this problem, both public institutions and bar associations are doing the necessary work. However, as a result of the observations made, it is seen that most of the asylum seekers do not have enough information about benefiting from justice services, especially legal aid, and the mechanisms established in this regard do not work effectively in practice. Therefore, problem areas regarding access to justice need to be addressed urgently.³⁴

2.4. Right to a Fair Trial

The right to a fair trial is guaranteed under Article 6 of the ECHR. According to the relevant article, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."³⁵

In recent years, in order to secure the right to a fair trial more effectively, many regulations have been made both based on legislation and on problems arising from practice. In fact, in the Judicial Reform Strategy Document published on May 30, 2019, "the balance of crime and sanction will be completely revised and rearranged by observing the principle of protection of rights and freedoms, especially the right to a fair trial" target has been determined.³⁶ There are also regulations regarding the right to a fair trial in the judicial packages issued regarding the

30 UN Covenant on Civil and Political Rights article 2: 3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.' See International Covenant on Civil and Political Rights <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> , Accessed on: 22.08.2021.

31 UN International Covenant on Economic, Social and Cultural Rights, 1966, article 2: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> , Access Date: 22.08.2021

32 International Convention on the Elimination of All Forms of Racial Discrimination, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> , Access Date: 22.08.2021.

33 Convention on the Elimination of All Forms of Discrimination against Women, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> , Access Date: 08/22/2021.

34 TİHEK, Akyurt Removal Center Report, Report No: 2020 / 20 October 2020. https://www.tih.gov.tr/upload/file_editor/2021/07/1625130267.pdf Access Date : 04.08.2021

35 https://www.echr.coe.int/documents/convention_eng.pdf, Access Date: 22.08.2021.

36 Judicial Reform Strategy Document, https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162931YRS_TR.pdf , Access Date: 22.08.2021

aims and objectives determined within the scope of the Judicial Reform Strategy Document.³⁷ However, despite the necessary regulations, some issues need to be improved regarding the right to a fair trial. Evaluations on these issues will be made below.

International conventions on human rights, to which states are a party, impose responsibilities on states at the international level. In addition to these international responsibilities, being a party to a convention includes a commitment to both the state's own citizens and those under its de facto sovereignty. This commitment is aimed at providing certain assurances to citizens and other third parties under de facto sovereignty in relation to the rights and responsibilities inherent in the convention to which one is a party. As one of the founding members of the Council of Europe, Türkiye; became a party to the ECHR; also accepted the individual application remedy of ECtHR, which is the supervisory body of the Convention and recognized the compulsory jurisdiction of the Court. In this context, the hesitations that emerged during the year regarding the implementation of the decisions of the ECHR, which was duly accepted and made a part of our domestic law, and the ECtHR, which is the supervisory body of the ECHR, do not comply with the idea of human rights. The appropriateness of the court's decisions and their compliance with the law and human rights can be discussed. Article 46 of the ECHR obliges all states parties to the Convention to comply with the decisions of the ECtHR.³⁸ When evaluated in terms of the principle of adherence to the contract, there will be no hesitation in complying with the Court's decisions.

Another issue that become a current issue in 2020 in terms of the right to a fair trial is the implementation of the decisions of the Constitutional Court (AYM). The Constitutional Court deems its duties and powers regarding the protection of human rights both from the Constitution, which is the highest norm, and from the related Law No. 6216 of 2011 on the Establishment and Trial Procedures of the Constitutional Court³⁹. The decisions of the Constitutional Court are the decisions that bind both the judicial authorities and the administrative authorities and which must be complied with in all circumstances and conditions. In order for the Constitutional Court to fulfill its mission of protecting human rights and freedoms, there should be no hesitation about the bindingness of its decisions. Contrary to both literal and purposive interpretation, the hesitation shown in the implementation of the decisions of the Constitutional Court carries the risk of rendering the human rights protection mission of the Constitutional Court and therefore the Constitution itself, which is the highest norm, dysfunctional.

37 <https://www.resmigazete.gov.tr/eskiler/2021/07/20210714-8.htm> , Access Date: 22.08.2021.

38 Giakoumopoulos, Christos, "Execution of European Court of Human Rights Judgments and Role of Constitutional Courts", *Journal of Constitutional Jurisdiction* , p. 33, 2016.

39 <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6216.pdf> , Access Date : 22.08.2021.

In 2020, there has been a partial increase in the number of files pending against Türkiye before the ECtHR. The number, which was 9,250 at the end of 2019, was recorded as 11,750 as of the end of 2020. In the number of pending applications, Türkiye ranks second after the Russian Federation.⁴⁰ The violation verdict against Türkiye in 2020 was recorded as 85. Considering that 140 violation decisions were made in 2018 and 96 in 2019 it is seen that the number of violation decisions against Türkiye in 2020 decreased by approximately 11.4% compared to the previous year.⁴¹

In 2020, the ECHR delivered 23 violation decisions against Türkiye regarding Article 6 of the ECHR, entitled fair trial. In 2019, the number of violations of the right to a fair trial was recorded as 17.⁴² Compared to 2019, there is a partial increase in the rate of violations of the right to a fair trial in 2020.

Freedom of expression, which is one of the essential elements of a democratic social order, is guaranteed on an international scale under Article 10 of the ECHR. According to the relevant article, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” In our country, necessary arrangements have been made at the constitutional and legal level in order to guarantee freedom of expression. Freedom of expression, including its academic, political, commercial and artistic dimensions, is guaranteed by legal norms. Freedom of expression, which is considered a necessity of a democratic social order, has been actualized through political parties, associations, trade unions and other civil society stakeholders.

In extraordinary situations, protecting citizens from provocative discourse and preventing disinformation appear as a requirement of the rule of law. However, both the actions and transactions of the administration and the people who take on public duties are not exempt from criticism even in these periods. Investigation of statements containing criticism of the state or political persons constitutes an unacceptable situation in terms of freedom of expression. E.g; after the earthquakes in İzmir and Elazığ in 2020, it has been observed that criticisms of public institutions and officials who undertake public duties which did not exceed the legal limit of freedom of expression are investigated. Within the scope of political criticism, criticism of public officials has a wide protection area. According to the Constitutional Court, “the municipality or the mayor must tolerate even the heaviest criticisms directed at them because of the public power they use.” The Court makes a distinction between public officials and politicians, while giving broad protection to public officials like politicians. The Constitutional Court emphasizes that “Although they are not as ordinary citizens, the

40 <https://inhak.adalet.gov.tr/Home/BilgiDetay/10>, Access Date : 03.08.2021.

41 <https://inhak.adalet.gov.tr/Home/BilgiDetay/10>, Access Date: 03.08.2021.

42 <https://inhak.adalet.gov.tr/Home/BilgiDetay/10>, Access Date: 03.08.2021.

limit of acceptable criticism of public officials is not as wide as the limit of criticism accepted for politicians, public officials must have public trust in order to fulfill their duties properly, and this can be achieved by protecting public officials against unfounded accusations”⁴³

Undoubtedly, freedom of expression also includes freedom of artistic expression. The clearest regulation regarding artistic expression is in Article 15 of the 1966 Convention on Economic, Social and Cultural Rights, to which Türkiye is also a party. According to the relevant article, “States parties to this Convention... undertake to respect the freedom necessary for creative activities.” Regulations on freedom of expression in general are included in Article 19 of the Covenant on Civil and Political Rights and Article 10 of the ECHR. According to the Constitutional Court, artistic expressions are under the protection of Articles 26 and 27⁴⁴ of the Constitution.⁴⁵ It has been regulated that artistic activities can only be prohibited by providing justifications in accordance with constitutional and legal procedures and principles. In 2020, Nobel Prize-winning Italian playwright Dario Fo’s play “Faceless” was banned in many parts of the country by governors and district governors. Undoubtedly, although it is foreseen that the use of this right may be limited in order to “prevent crimes and punish criminals” within the scope of Article 26 of the Constitution, the fact that the same play was staged before, the reasons for the ban were abstract and the decision to ban was taken very close to being staged reveals that the restriction in question is not compatible with freedom of expression.

Another problem area that needs to be addressed within the scope of freedom of expression concerns the bans on actions and activities imposed on the basis of provinces. Freedom of expression includes the right to assemble. Restrictions on this right may be imposed in cases where it is necessary. In fact, the restrictions imposed on this right are in some cases a duty for the state. However, the measures taken must be taken without infringing upon their essence and shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality. In this context, the bans on actions and activities taken by the governorships in some provinces and extended repeatedly can reach levels that prevent the use of the right to a large extent and render the right meaningless. Therefore, it is necessary to implement regulations that will prevent the continuous extension of prohibitions of actions and activities for printed reasons and ensure that these decisions are based on concrete reasons.

43 Karan, Ulaş, “Freedom of Speech”, Individual Application to the Constitutional Court Manuals Series -2, Council of Europe 2018, p. 11th

44 Freedom of expression and dissemination of thought
Article 26 – Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.” See, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2709.pdf>, Access Date: 23.08.2021

45 Karan, Ulaş, “Freedom of Speech”, Individual Application to the Constitutional Court Manuals Series -2, Council of Europe 2018, p. 15.

2.5 Freedom of Expression and Association

Freedom of expression, which is one of the essential elements of a democratic social order, is guaranteed on an international scale under Article 10 of the ECHR. According to the relevant article, “Everyone has the right to freedom of expression. This right includes freedom of opinion and freedom to receive and impart information and opinions without interference by public authorities and regardless of national borders.” In our country, necessary arrangements have been made at the constitutional and legal level in order to guarantee the freedom of expression. Freedom of expression, including its academic, political, commercial and artistic dimensions, is guaranteed by legal norms. Freedom of expression, which is considered a necessity of a democratic social order, has been actualized through political parties, associations, trade unions and other civil society stakeholders.

In extraordinary situations, protecting citizens from provocative discourse and preventing disinformation appear as a requirement of the rule of law. However, both the actions and transactions of the administration and the people who take on public duties are not exempt from criticism even in these periods. Investigation of statements containing criticism of the state or political persons constitutes an unacceptable situation in terms of freedom of expression. For example; After the earthquakes in İzmir and Elazığ in 2020, which did not exceed the legal limit of freedom of expression; it has been observed that only criticisms of public institutions and officials who undertake public duties are investigated. Within the scope of political criticism, criticism of public officials has a wide protection area. According to the Constitutional Court, “the municipality or the mayor must tolerate even the heaviest criticisms directed at them because of the public power they wield.” While the Court provides broad protection to public officials like politicians, it makes a distinction between public officials and politicians. The Constitutional Court emphasizes that “even though the public officials do not see the acceptable criticism limit as ordinary citizens, it is not as wide as the criticism accepted for politicians, public officials must have public trust in order to fulfill their duties properly, and this can be achieved by protecting public officials against unfounded accusations”.⁴⁶

Undoubtedly, freedom of expression also includes freedom of artistic expression. The clearest regulation regarding artistic expression is in Article 15 of the 1966 Convention on Economic, Social and Cultural Rights, to which Türkiye is also a party. According to the relevant article, “The States Parties to the present Convention undertake to respect the freedom indispensable for scientific research and creative activity.” Regulations on freedom of expression in general are included in Article 19 of the Covenant on Civil and Political Rights and Article 10 of the ECHR. According to the Constitutional Court, artistic expressions are

46 Karan, Ulaş, Freedom of Expression, Individual Application to the Constitutional Court Manual Series -2, Council of Europe 2018, p. 11th.

under the protection of Articles 26 and 27⁴⁷ of the Constitution. ⁴⁸ It is regulated that artistic activities can only be prohibited by providing justifications in accordance with constitutional and legal procedures and principles. In 2020, Nobel Prize-winning Italian playwright Dario Fo's play "Faceless" was banned in many parts of the country by governors and district governors. Undoubtedly, within the scope of Article 26 of the Constitution, it is foreseen that the use of this right may be limited for the purpose of 'preventing crimes and punishing criminals', although the same play has been staged before, the reasons for the ban are abstract and the ban decision was taken very close to being staged reveals that it is not compatible with freedom.

Another problem area that needs to be addressed within the scope of freedom of expression concerns the bans on actions and activities imposed on the basis of provinces. Freedom of expression includes the right to assemble. Restrictions on this right may be imposed in cases where it is necessary. In fact, the restrictions imposed on this right are in some cases a duty for the state. However, the measures taken must be taken without touching their essence as required by the constitutional provisions, and must not be contrary to the word and spirit of the Constitution, the requirements of the democratic social order and the secular Republic, and the principle of proportionality. In this context, the bans on actions and activities taken by the governorships in some provinces and extended repeatedly can reach levels that prevent the use of the right to a large extent and render the right meaningless. Therefore, it is necessary to implement regulations that will prevent the continuous extension of bans of actions and activities for printed reasons and ensure that these decisions are based on concrete reasons.

2.6. Right to Work

The content of the right to work consists of the fact that every person has a job, income and security with which he can lead a life worthy of human dignity. This right includes 'the right to job security, the right to fair wages, the right to rest, the right to be protected against mobbing, discrimination and termination, and the right to form and organize unions'. The right to work is a fundamental human right that is directly related to human self-realization and to a life in accordance with human dignity by preventing unemployment, unjust termination, and dangerous, unhealthy and unfair working conditions.

⁴⁷ Freedom of expression and dissemination of thought.

Article 26 Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. See., <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2709.pdf> , Accessed On: 23.08.2021.

⁴⁸ Karan, Ulaş, Freedom of Expression, Individual Application to the Constitutional Court Manual Series -2, Council of Europe 2018, p. 15.

In our country, one of the important sub-titles within the scope of the right to work is the problem of unregistered employment. Informal employment both causes financial losses and negatively affects the right to work. Due to unregistered employment, employees cannot benefit from the rights such as 'general health insurance, retirement right, compensation and unemployment insurance and engaging in union activities' in the labor laws. According to the October 2020 data of the Turkish Statistical Institute (TURKSTAT), the rate of unregistered workers in the non-agricultural sector in our country was recorded as 19.9%. The aforementioned data reveal that many people are affected by the negativities caused by unregistered employment. The negative effects of the pandemic were added to this negative picture. In this context, it is important to combat unregistered employment so that employment can have a qualified structure and employees have social security.

The right to unionize and carry out trade union activities, which are under constitutional guarantee, constitute one of the indispensable rights that should be evaluated within the scope of the right to work. According to the statistics of the MFSS for July 2020, 1,917.669 people are in five different confederations; 28,496 people independently carry out trade union activities.⁴⁹ As of 2020, the unionization rate in Türkiye was recorded as 7.20%. Compared to the Organization for Economic Development and Cooperation (OECD) countries, it is observed that the unionization rate, which is 17%, remains at a low level.⁵⁰

Due to the Covid-19 pandemic in 2020, a large number of people have lost their workforce temporarily or indefinitely. In order to prevent the negative effects of the pandemic on employment, "Law No. 7244 on reducing the Effects of the Pandemic on Economic and Social Life and Amendment to Some Laws"⁵¹ dismissal of employees was prohibited during the pandemic, and employers were authorized to take employees on unpaid leave. The said authority, which is an important step in terms of its purpose, has rendered the ban on dismissal ineffective in practice. In addition, It has been publicized that the practice of "termination due to situations that do not comply with the rules of morality and goodwill",⁵² which is stipulated as an exception to the prohibition of dismissal in the law leads to practices that are not well intentioned in practice. This situation has remained as an abusive method against the workers; at the same time, it has led to a situation that weakens the employment opportunities of the workers in the future.

49 <https://www.csgeb.gov.tr/istatistikler/calisma-hayati-istatistikleri/sendikal-istatistikler/isci-sayilari-ve-sendikalarin-uye-sayilari-hakkinda-tebligler/>, Access Date: 04.08.2021.

50 <https://www.tuik.gov.tr/>, Access Date: 03.08.2021.

51 <https://www.resmigazete.gov.tr/eskiler/2020/04/20200417-2.htm>, Access Date: 04.08.2021.

52 Article 9 – The following provisional article has been added to the Labor Law dated 22/5/2003 and numbered 4857.

"Provisional Article 10 – "Regardless of whether it is within the scope of this Law, all kinds of employment or service contracts shall comply with the moral and good faith rules set forth in the first paragraph of Article 25 (II) and the relevant provisions of other laws for a period of three months from the effective date of this article. It cannot be terminated by the employer, except for non-compliance and similar reasons .

As of the effective date of this article, the employer may take the employee on unpaid leave, in whole or in part, for a period not exceeding three months. Taking unpaid leave within the scope of this article does not give the worker the right to terminate the contract based on just cause.

The employer or employer's representative who terminates the employment contract in violation of the provisions of this article is charged with an administrative fine equal to the monthly gross minimum wage for each employee whose contract is terminated.

The President is authorized to extend the three-month periods in the first and second paragraphs up to six months ."

Within the scope of the financial support package announced to eliminate the negative effects of the pandemic in the labor market, it was decided to meet 60% of the gross salaries of the individuals with the right to benefit from the Short Working Allowance. It is stipulated that the applications made to benefit from the Short Working Allowance should be finalized within sixty days, excluding the eligibility determinations. In addition, the provision that the worker must fulfill the conditions for entitlement to unemployment insurance, excluding the termination of the service contract, which is foreseen in order to be entitled to the Short-Time Working Allowance, is renewed in the form of having worked insured for 450 days in the last three years and paid unemployment insurance premium for those who were subject to a service contract for the last 60 days before the beginning of short-time working. By this way, it was ensured that more workers benefit from the short-time working allowance.

For those who could not benefit from the Short Working Allowance, became unemployed after March 15 or had to go on unpaid leave, it is envisaged to allocate resource of 39.24 TL per day determined as Cash Wage Support and 2 billion since March to the share of Social Assistance and Solidarity Foundations to be delivered to families in need. In this context, among those who benefit from cash wage support, those who do not fall under the scope of the general health insurance holder or the dependent of the general health insurance holder according to the Social Security and General Health Insurance Law No. are considered health insured by means of their premiums are covered by the unemployment insurance fund, within the scope of subparagraph (g) of the first paragraph of Article 60 of the same Law. However, it is considered that excluding employees who are on unpaid leave in the scope of the short-time working allowance and supporting by the Unemployment Insurance Fund with a monthly gross of 1,177 TL, may leave the employees and their families in an economically difficult situation.

2.7. Right to Education

The right to education, which is included within the scope of ‘social, economic and cultural rights’, which confirms the catalog of ‘civil and political rights’, which is accepted as the first generation in the rights system of the human rights doctrine, has a ‘cultural’ as well as a ‘social’ dimension. The right to education is a social right that is legally guaranteed for all individuals without discrimination, that imposes positive obligations on states for the fulfillment of the right, and that states can be held responsible for the violation or deprivation of this right. The right to education is guaranteed in a number of international conventions such as the “Universal Declaration of Human Rights of 1948, the UN International Convention on Economic, Social and Cultural Rights of 1966 and the Convention on the Rights of the Child of 1989”. The right to education can be characterized both as a human right in itself and as an indispensable tool for realizing other human rights. On a global scale, the Covid-19 pandemic has brought about deep ruptures in the responsibility of states to effectively fulfill and protect this right.

The resource allocated for the Ministry of National Education (MoNE) budget in the 2020 Central Government Budget, which was prepared for the first time in 2020 based on the Program Budget, is 177,605,504,000 Turkish liras. This figure corresponds to 16.2% of the 2020 Central Government Budget.⁵³ The resources allocated to the budgets of other education programs to carry out their work are given in the table below.⁵⁴

Years	Ministry of National Education (MoNE)	CoHE, Higher Education Quality Board and Universities	Student Selection and Placement Center (SSPC)	Credit and and Dormitories Institution	Total Education Budget
2020	125.396.862.000	36.145.740.000	717.792.000	15.345.110.000	177.605.504.000

Table 1: Distribution of Education Budget by Institutions

Throughout the world, within the scope of protecting public health during the pandemic period, almost all schools, from pre-school to primary education, from secondary education to higher education, had to take a break from face-to-face education. Along with the pandemic, the Ministry of National Education has taken measures to ensure that students are least affected by this situation by reacting quickly in order to continue education through online platforms. As of March 23, 2020, the Ministry of National Education has included students at every school level within the scope of distance education through three television channels and the Education Information Network (EBA). Universities continued their distance education through different online platforms. On the other hand, the trainings continued by applying mixed methods in the application-based departments.

Despite all these measures, the beginning of educational activities with distance education tools has brought many inequalities based on equal access to education. It has been observed that there is a difference in the way schools offer distance education and the level of students benefiting from these opportunities. With the pandemic, tablet distribution for students has intensified. More than 2.000.000 tablets were distributed throughout the country for the children of families with financial difficulties. However, due to Türkiye's relatively large population and the effect of the pandemic overall country in a short time, it has been observed that there are some disruptions in this regard. "Disadvantaged students" such as 'people with low socio-economic status, persons belonging to certain minority groups and those in need of special education' have been the group most affected by the crisis environment.⁵⁵ Distance education, which is carried out through technological opportunities, not only reduces learning

53 <https://www.meb.gov.tr/mill-egitim-bakanligi-2020-yili-butcesi-tbmm-genel-kurulunda-kabul-edildi/haber/19909/tr>, Access Date: 06.02.2021.

54 MoNE, Official Letter dated 22.02.2021.

55 Mahmut Özer, Hayri Eren Suna, Zafer Çelik, Petek Aşkar, "The Effect of School Closure Due to the Covid-19 Pandemic on Educational Inequalities", İnsan ve Toplum, 13.11.2020, p.218.

losses, but also brings with it the risk of deepening existing inequalities for students who do not have these opportunities. So much so that the news that a group of students in Yüksekova, Hakkari, did not have internet access in their village, had to climb to a hill with an altitude of 2500 to be able to connect to EBA and teach was reflected in the press.⁵⁶ In this process, aid campaigns initiated for students who do not have educational materials such as computers and tablets can be mentioned among important developments that increase the effective use of the right to education and the operability of this right.⁵⁷ However, it was observed that there were still some deficiencies and disruptions in this process. Similarly, persons with disabilities have the right to benefit from the right to education based on equal opportunity without being subjected to any discriminatory treatment.⁵⁸ Therefore, it is necessary to prioritize initiatives to raise awareness about the pandemic and its effects on the right to education of people with disabilities.

2.8. Right to Health

Health, as a vital human right, constitutes one of the basic components of the ‘dignified life’ ideality. The ‘right to health’, a category of right in which every single human being is evaluated as a right subject without discrimination, can be defined as the right to have the highest attainable health standards. In this context, the right to health is considered as a fundamental human right, which must be used together with other fundamental human rights and is often the basic condition for the use of other rights⁵⁹

The pandemic, which emerged in the city of Wuhan, China and affected the whole world, including our country, in a short time, caused serious breaks in social and economic life, especially the right to health. Türkiye At a time when the health and social security systems of many countries (such as Italy and Brazil) have come to a standstill, thanks to its ‘health infrastructure, sufficient and qualified human resources employed in the health sector, comprehensive insurance practices and effective preventive measures’, Türkiye has become one of the countries that carry out this process effectively. The timely supply of necessary drugs and equipment, especially from the first moment of the pandemic, is one of the important stages of this success. “Science Board”, of which expert academics are members during the Covid-19 pandemic process.⁶⁰ was formed, and policies and measures were implemented in line with the opinions and suggestions of the academy and the scientific world on this issue. In addition,

56 “Students Climbing the Hill by Phones, Studying by Connecting to EBA” Habertürk, 02.10.2020, <https://www.haberturk.com/telefonlarin-cekti-gi-tepeye-cikan-ogrenciler-ebaya-baglanarak-ders-isliyor-2822996>, Access Date :07.02.2021.

57 <https://www.meb.gov.tr/500000-tablet-bilgisayar-dagitiminin-ikinci-fazindayiz/haber/22182/tr>, Access Date :07.02.2021.

58 “The Right to Education of Children with Autism and the Prohibition of Discrimination”, HREIT Thematic Report, March 2020, https://www.tihek.gov.tr/upload/file_editor/2020/04/1585822889.pdf, Erişim tarihi:09.02.2021.

59 Committee on Economic, Social and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)”, 11 August 2000.

60 <https://www.saglik.gov.tr/TR,63605/koronavirus-bilim-kurulu-bakan-koca-baskanliginda-toplandi.html> , Access Date: 23.08.2021.

a “Social Sciences Board” was established to work in areas such as sociology, communication, psychology, sociology of religion, statistics during the coronavirus pandemic.⁶¹

Providing health services as an on-site and accessible public service requires a strong infrastructure and an effective health system. Türkiye’s strengthened health infrastructure and personnel resources have enabled Türkiye to provide more effective health services to its citizens when compared to other countries, despite all the negative conditions created by the pandemic. In addition, necessary diplomatic dialogues were established for the supply of alternative vaccines in this process. It provided equipment and drug support to other countries during the periods when the supply of health equipment was most difficult. In addition to its obligation to protect, fulfill and respect the right to health, Türkiye also attaches importance to international cooperation.

2.9. Children’s Rights

Children’s rights constitute a category of rights that includes rights such as ‘education, shelter, life and health’ that are guaranteed in the international legal order. In Türkiye, many actors such as ‘public institutions and organizations, NGOs, universities and bar associations’ have obligations regarding the protection and promotion of children’s rights.

The executive body primarily responsible in the public sense; is the General Directorate of Child Services of the Ministry of Family and Social Services. It prepared; “Guide for Parents and Persons in Charge of Child Care during the Coronavirus Process”⁶² in order to provide advice to parents and child caregivers working in child care institutions to both protect their own well-being during the Covid-19 pandemic and to help the children they are responsible for more easily get through the process.

Within the scope of its duty to protect and develop human rights, HREIT also has a responsibility in the field of ‘children’s rights’. So much so that the situations of children deprived of their liberty or taken under protection during NPM visits carried out within the scope of OPCAT are specifically handled by HREIT. An unannounced visit was made to the Mevlana Children’s Houses Site in 2020 and the visit report was shared with the public.⁶³

All institutions and organizations operating in the field of children’s rights came together at the “National Children’s Forum” organized within the scope of 20 November World Children’s Rights Day. The twenty-first edition of the Forum was held on November

61 <https://www.saglik.gov.tr/TR,65907/toplum-bilimleri-kurulu-saglik-bakani-koca-baskanliginda-toplandi.html> , Access Date: 23.08.2021.

62 General Directorate of Child Services, “Guidelines for Parents and Persons Responsible for Child Care During the Coronavirus Process”, <https://www.aile.gov.tr/media/47720/koronavi-ru-s-su-reci-nde-c-supporting-children.pdf>

63 https://www.tihek.gov.tr/upload/file_editor/2020/11/1604606254.pdf , Access Date: 09.08.2021.

18, 2020 with the theme of “Healthy Child, Healthy Future” in cooperation with Ministry of Family and Social Services and UNICEF (UN Children’s Fund) with the participation of children’s rights representatives from 81 provinces of Türkiye.⁶⁴ Intersectoral Children’s Board meeting established for the implementation, coordination and monitoring of the Türkiye-UNICEF Cooperation Country Program was held on March 10, 2020 with the participation of public institutions and organizations, UNICEF, NGO representatives and academics.⁶⁵

One of the issues that need to be addressed within the scope of children’s rights is about children who are employed/begged. Various studies are carried out to prevent and control child labor in Türkiye. The “Prevention of Child Labor in Seasonal Agriculture Project” (2020-2023) is one of the concrete steps taken. The project, which will last for approximately 40 months, is planned to take place in the cities of Şanlıurfa, Mardin, Adıyaman, Diyarbakır, Adana, Mersin, Hatay, İzmir, Manisa, Ankara, Eskişehir, Konya, Malatya, Ordu, Bursa and Düzce, which are the cities that receive and give the most immigrants in seasonal agriculture. ‘Providing on-site training, counseling and rehabilitation services to 12 thousand children, as well as providing support such as education, food and clothing, and guiding children to education by preventing them from being employed in agriculture’ are among the project objectives.⁶⁶

In addition, the National Program for Combating Child Labor (2017-2023) Action Plan continues to be implemented under the coordination of the General Directorate of Labor with the main objective of preventing the worst level of child labor, especially in heavy and dangerous works in industry, on the street and in seasonal mobile temporary agriculture. The Current Situation Document, which includes six-month realizations, is published at regular intervals.⁶⁷ It is important to raise awareness about child labor and to create policy documents in this area. Problems related to child labor continue both in our country and on a global scale. Official data on the subject have been requested from Ministry of Family and Social Services, but no relevant data has been shared with our Institution on the subject. At this point, it is important and necessary to strengthen the measures against child labor and to use administrative and judicial penal practices more effectively.

Children between the ages of 3 and 6 staying in penitentiary institutions can benefit from the kindergartens of the Ministry of National Education, free of charge, within the

64 <https://www.ailevecalisma.gov.tr/tr-tr/haberler/21-ulusal-cocuk-forumu-basladi/> , Access Date: 09.08.2021.

65 <http://www.sck.gov.tr/> , Access Date: 23.08.2021.

66 https://www.ailevecalisma.gov.tr/media/53577/mevsimlik_tarim_isciligi_projesi.pdf , Access Date: 09.08.2021.

67 <https://www.ailevecalisma.gov.tr/cgm/dokumanlar/cocukisciligiilemucadeleulusalprogramiylemlani/> , Accessed on: 07.08.2021.

scope of the Education and Training Cooperation Protocol⁶⁸ made between the Ministry of Justice and the Ministry of National Education, without priority and without being queued. Psychosocial development of children staying with their mother is supported and monitored by psychosocial services. A large number of services are provided for children staying with their mothers, such as food, milk, and material subsistence. In addition, within the possibilities, kindergartens, nurseries and playgrounds are built in penitentiary institutions⁶⁹

Along with professional studies for examining and solving the sheltering problems of women and children staying in women's shelters, women and children are supported directly or by directing them to relevant organizations in areas such as security, counseling, psychological support, legal support, medical health support, educational support, pocket money, nursery, vocational training courses, group work, social, artistic and sportive activities.

One of the areas where the effects of the execution regulation law, which includes issues such as conditional release and probation, published in the Official Gazette on April 15, 2020, can be seen is related to the possibility of re-offending by the people who benefit from the regulation. It is especially important to monitor the perpetrators of violence, who are deprived of their freedom due to child abuse or violence against children and released with the new regulation. In this context, it is critical to establish an effective monitoring/supervision mechanism for the protection of women and children who are victims of perpetrators' violence.

During the Covid-19 pandemic, children's activities in digital media have shown an increasing trend. In parallel with this active participation, digital risks for children came to the fore. In this context, foreseeing measures to protect children against digital danger in the Human Rights Action Plan presents a meaningful framework. The Action Plan includes activities such as "increasing the efforts to protect children from digital risks, cyberbullying, internet addiction and the harms of written and visual media" and "taking necessary measures to combat online child abuse acts more effectively and to eliminate grievances caused by this"⁷⁰

2.10. Women's Rights

In the Eleventh Development Plan (2019-2023), 'preventing all kinds of discrimination against women, ensuring that women benefit equally from rights and opportunities in all areas of social life and that they are empowered' has been determined as the main objective.⁷¹

68 <https://cte.adalet.gov.tr/Resimler/Dokuman/1032020092633ABveMEB.pdf> , Access Date: 23.08.2021.

69 <https://cte.adalet.gov.tr/Home/SSSorularDetay/11> , Access Date : 23.08.2021.

70 Ministry of Justice, Human Rights Action Plan, <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep02-03-202115-14.pdf>, p. 94.

71 <https://www.sbb.gov.tr/wp-content/uploads/2019/07/OnbirinciKalkinmaPlani.pdf> , Access Date: 10.08.2021.

In order to achieve the main purpose in the section on women's rights in the Development Plan;

- Accelerating social awareness-raising efforts to prevent violence against women, early forced marriages and all kinds of abuse, and increasing the efficiency and capacity of protective and preventive services,
- Encouraging women's active participation in economic, social, cultural life and all levels of decision-making mechanisms, especially starting from the local level, ensuring full access and active participation of girls and women at all levels of education,

Many measures are envisaged in the policy headings.⁷²

In our national legal system, important legal regulations have been implemented in terms of protecting women's rights, preventing discrimination, ensuring equality between men and women and combating violence against women. However, in addition to legal regulations in terms of protecting and strengthening women's rights and combating violence, it is also critical to create social awareness in order to effectively implement these regulations, to benefit from psychosocial support for victims, to treat and rehabilitate perpetrators, and to prevent violence.

Violence against women, which is a violation of human rights and a form of discrimination, constitutes one of the most significant problem areas that need to be tackled. This global problem violates women's basic human rights such as 'the right to life, security, freedom, physical and emotional integrity' and negatively affects society as a multidimensional problem area. Combating violence against women requires a multi-faceted, holistic and determined approach in which all segments of society are involved in the process of prevention, protection, punishment and policy development. The factors that lead to acts of violence against women arise from various reasons such as cultural, economic and psychological. Therefore, at the point of combating violence, coordinated and multidimensional studies of relevant institutions and organizations on related problem areas are important.

Acts of violence against women frequently took place in the agenda of the country in 2020 as well. According to the official data of the Ministry of Interior, 266 women lost their lives as a result of femicide in 2020⁷³

The implementation period of the "Third National Action Plan to Combat Violence Against Women" covering the years 2016-2020, prepared in 5-year periods with the coordination of MFSS, for the purpose of combating violence against women, was completed

72 <https://www.sbb.gov.tr/wp-content/uploads/2019/07/OnbirinciKalkinmaPlani.pdf>, Access Date: 10.08.20

73 Numerical data were obtained from official correspondence with the Ministry of Interior during the report writing process.

by the end of 2020. The “Fourth National Action Plan to Combat Violence Against Women” covering the years 2021-2025 has been prepared with the contribution and participation of public institutions and organizations, NGOs and universities, taking into account the international conventions and national legislation provisions, as well as the social needs and developments that have emerged recently. With the Action Plan, it is aimed to make improvements in five basic areas: ‘legislation regulations, awareness raising and mentality transformation, protective and preventive service provision, empowerment of victims of violence, regulation and implementation of health services, cooperation between institutions and organizations and policy’. Again, in this context, the “Coordination Plan for Combating Violence against Women” (2020-2021), which was prepared in cooperation with the Ministry of Justice, Ministry of Interior, Ministry of Health, Ministry of Health and Directorate of Religious Affairs, was put into effect under the leadership of Ministry of Family and Social Services.⁷⁴

Violence Prevention and Monitoring Centers (SONIM), serving within the scope of the Law No. 6284 on the Protection of the Family and the Prevention of Violence against Women, provide services in 81 provinces across the country. In SONIMs, monitoring studies are carried out and support services are provided for the prevention of violence and the effective implementation of protective and preventive measures. In these centers, ‘temporary financial aid, guidance, counseling, follow-up and monitoring of temporary protection in case of life-threatening danger, kindergarten assistance, legal support, medical support, support for employment, scholarships for children, support for education and training’ services are offered. As for those who perpetrate violence in the centers; ‘Participating in education and rehabilitation programs aiming to change attitudes and behaviors by providing awareness about anger control, coping with stress, preventing violence, etc.’ activities exist. In the period from 2013 to January 31, 2021, the number of women who received service from SONIM was recorded as 640565 and the number of children as 93340⁷⁵

Another service area offered within the scope of women’s rights in our country is women’s guesthouses. There are 148 guest houses affiliated to the Ministry in 81 provinces throughout Türkiye. Professional studies are carried out by the Ministry to examine the situation of women who receive service in women’s shelters, their disagreements with their families or spouses, and to resolve their problems, and support is offered to them in the form of security, counselling, medical support, temporary financial aid, kindergarten, vocational training course, group work, social, artistic and sports activities and the like. In addition, it is planned that the Women’s Shelter Service Standards Guide and Women’s Shelter Self-Assessment Guide, prepared within the scope of specialization studies that are structured

74 <https://ailevecalisma.gov.tr/media/68952/8-mart-ozel-sayi.pdf>, Access Date: 09.08.2021.

75 <https://ailevecalisma.gov.tr/media/68952/8-mart-ozel-sayi.pdf>, Access Date: 10.08.2021.

as applicable, sustainable, traceable and measurable, will be effectively implemented in all women's shelters across the country. Between 2002-31 January 2021, 411995 women and their children benefited from 148 Women's Guesthouses across the country.⁷⁶

The 'Alo 183 Support Line' established within MFSS works as a psychological, legal and economic advice line for women and children who have suffered or are at risk of violence and need support and assistance; informs these people about their rights and about the application authorities. In case of urgency, the emergency response team responsible and/or law enforcement officers of the province where the case is located are notified and intervention is ensured. This line operates on a 24/7 basis and offers service in Arabic and Kurdish language versions. In addition, the line has a short message communication feature and a 3G feature for the hearing impaired.⁷⁷

In the opinions conveyed by NGOs, it was stated that there were some malfunctions in the mechanisms of combating violence regarding the implementation of Law No. 6284 during the year. In this context, it was stated that serious obstacles were created in front of women's access to and exercise of the rights clearly defined in Law No. 6284, and that the law enforcement officers responsible for implementing the relevant Law were negligent of their duties. It has been stated that the law enforcement agencies, which is the institution that women apply most frequently when they are exposed to violence, are not informed about their rights or they are misinformed or incompletely informed, they are deterred from complaints, they are forced to show evidence despite the law, they are tried to reconcile with the perpetrator and their complaints are not received and they are kept in the police station for hours. In addition, it was stated that there were violations of rights such as the arbitrary rejection of women's applications to asylum centers that are critical for their life safety, not being allowed to leave the asylum centers, and the confiscation of their phones. However, it was stated that during the pandemic period, due to the coronavirus measures, various problems were experienced in the mechanisms and processes, access to fundamental rights became difficult, social assistance applications were rejected without justification while the pandemic conditions and economic problems continued, and the applications remained under evaluation for a long time. It was stated that during the Covid-19 pandemic, women had difficulty in accessing health services, became impoverished, their burden of unpaid care work increased tremendously and they were exposed to domestic violence⁷⁸

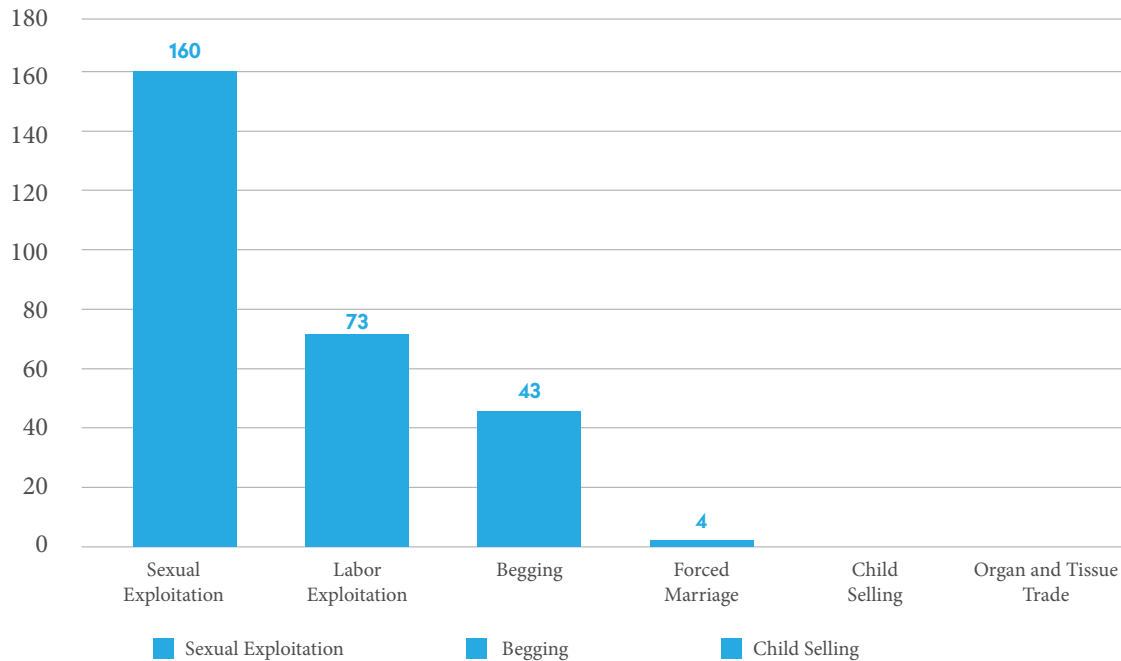
Since 221 of the 282 victims of human trafficking identified within the borders of our country are women, the issue in question should be addressed within the scope

76 <https://ailevecalisma.gov.tr/media/68952/8-mart-ozel-sayi.pdf>, Access Date: 10.08.2021.

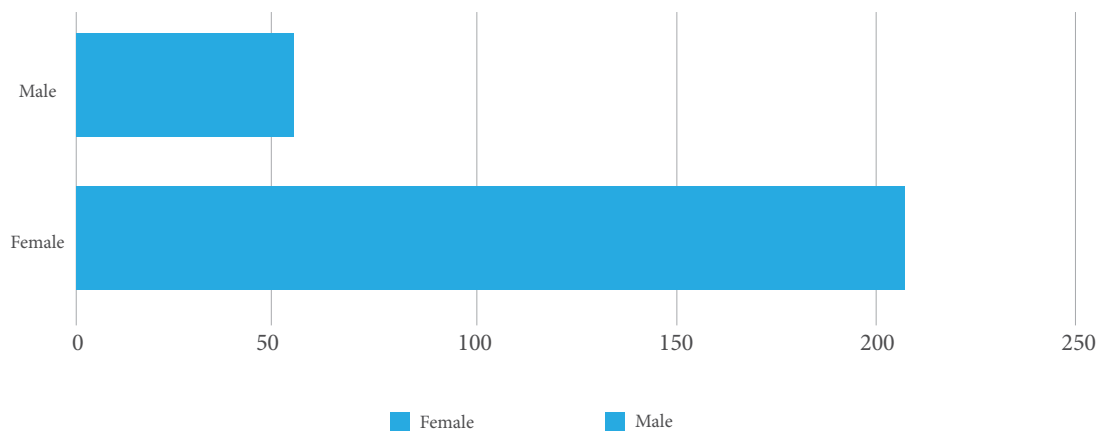
77 <https://www.aile.gov.tr/ss/engelli-ve-yasli-hizmetleri-genel-mudurlugu/alo-183-sosyal-destek/> , Access Date: 23.08.2021.

78 <https://kadinininsanhaklari.org/tihekten-gelen-bilgi-talebine-iliskin-kih-yc-ve-mor-cati-olarak-iletigimiz-ortak-gorusemuz/> , Access Date: 08.08.2021.

of women's rights. Türkiye is conducting interviews with potential victims in order to identify more victims. In this context, according to the official data of the Ministry of Interior, a total of 4,919 potential victims of human trafficking were interviewed in 2020. 282 of the interviewees were identified as victims of human trafficking.⁷⁹ Detailed data on individuals identified as victims vary as follows:



Graph 4: Distribution of Victims of Human Trafficking by Type⁸⁰



Graph 5: Distribution of Victims of Human Trafficking by Sex

⁷⁹ <https://www.goc.gov.tr/insan-ticareti-ile-mucadele-istatistik>, Access Date: 08.08.2021

⁸⁰ <https://www.goc.gov.tr/insan-ticareti-ile-mucadele-istatistik>, Access Date: 08.08.2021.

With the Decision No. 2020/1.2 of the Anti-Trafficking Coordination Committee meeting, which convened on 10 December 2020 in order to monitor and evaluate the activities carried out by Türkiye within the scope of combating human trafficking by an independent and impartial institution, to strengthen the national steering mechanism and to accelerate the aforementioned fight, HREIT has been determined as the “National Rapporteur Institution” to monitor and evaluate the field of dealing with human trafficking⁸¹

Another issue regarding women’s rights is to enable women to take a more active role in working life. In this context, important regulations have been made in the legislation, especially in the Constitution, regarding the more active participation of women in working life. According to the ‘Women with Statistics 2020’ bulletin prepared by TURKSTAT; in 2019, the rate of employed people aged 15 and over in Türkiye is 45.7%.⁸² This rate was recorded as 28.7% for women and 63.1% for men. When the female employment rate in question is taken into account, it shows that there are steps to be taken in terms of ensuring their participation in employment since this rate is less than half of the male employment rate.

The rate of women employed in various institutions and organizations can be cited as an example of the female employment rate. According to the data of the Ministry of Foreign Affairs; while the rate of female ambassadors was 9.4% in 2007, this rate increased to 25% in 2020. According to the data of the TGNA; in 2020, the number of female deputies among 584 deputies was recorded as 101 and the number of male deputies as 483. While the rate of female MPs was 9.1% in 2007, this rate increased to 17.3% in 2020.⁸³ While this change points to a positive development, it also reveals that there are distances to be covered.

It is important to implement these amendments as well as the legislative amendments made in order to protect and strengthen the fundamental rights of women and to provide services based on human rights. Regarding the participation of women in employment and the problems they experience in business life, parents are given the opportunity to work part-time until their children reach the compulsory primary education age, within the scope of the Additional Article 43 added to the Civil Servants Law No. 657 in 2016.⁸⁴ It is a positive development that this right is recognized not only for women but also for both parents. However, the fact that the Implementation By-Law of the Law has not been enacted yet causes grievances in the use of the right for those who can benefit from the right. Therefore, it is important to remove the grievances by enacting the relevant By-Law as soon as possible.

81 <https://www.tihek.gov.tr/insan-ticaretiyle-mucadele-ulusal-raporlorlugu/>, Access Date: 23.08.2021.

82 TurkStat, “Women with Statistics”, <https://data.tuik.gov.tr/Bulten/Index?p=Istatistiklere-Kadin-2020-37221> , Access date: 08.08.2021

83 TurkStat, “Women with Statistics”, <https://data.tuik.gov.tr/Bulten/Index?p=Istatistiklere-Kadin-2020-37221> , Access Date: 08.08.2021..

84 <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.657.pdf> , Access Date: 23.08.2021.

2.11. Elderly Rights

The rapid aging of the population on a global scale leads to social and economic changes. According to the ‘Elderly People with Statistics 2020’ data published by TURKSTAT; While the elderly population over the age of 65 was 6 million 495239 people in 2015, it has increased by 22.5% in the last five years and reached 7 million 953555 people in 2020. While the proportion of the elderly population in the total population was 8.2% in 2015, it increased to 9.5% in 2020.⁸⁵ Considering the aforementioned data, it is seen that the rights of the elderly have emerged as the needs of a larger audience.

The social awareness that has emerged in the last few years on the elderly and their rights, which have been relatively neglected both in institutionalization and normization, and in academic and civil society studies, is important. Both the studies carried out at the relevant Ministry level and the increasing interest of the academia and NGOs are an important development in terms of protecting the rights of the elderly. However, it should be underlined that the interest in the rights of the elderly is still not at a sufficient level. In the Final Declaration of the Elderly Rights Workshop organized by our institution on December 2, 2019, the neglect of the rights of the elderly was revealed with the statements “It is seen that the developments provided for children, women and the people with disabilities in terms of human rights adventure and the efforts made are not at the same level in terms of the rights of the elderly”⁸⁶

Although there are positive developments mentioned above in the field of elder rights, this field still appears as a right category that is open to development. There is a changing perception in society towards the elderly. Perceptions and discourses towards the elderly, which are used or created intentionally or inadvertently, are discriminatory. It is especially important that the written and visual media use a more responsible and careful language in this regard.

During the Covid-19 pandemic, special measures should be taken to protect the elderly, to draw attention to the visibility of the rights of the elderly, as they are the most affected segment, and to reduce the risks to them within the scope of the social state principle. It is necessary to give special attention to psychological counseling and psychotherapy studies for depression, anxiety, stress and trauma situations that occur in elderly individuals during the pandemic.

Despite the numerical and proportional increase in the elderly population in our country, there is no general legal regulation at the national level regarding the rights of the elderly. There is a need for a legal regulation that will reveal the social, economic, political and cultural rights of the elderly and express the duties of all responsible stakeholders. In this

85 TURKSTAT, “Elderly People with Statistics 2020”, <https://data.tuik.gov.tr/Bulten/Index?p=Istatistiklere-Yaslilar-2020-37227>, Access Date: 08.08.2021

86 HREIT, “Final Declaration of Elderly Rights Workshop”, Ankara 2019. https://www.tihek.gov.tr/upload/file_editor/2020/10/1601546099.pdf Access date: 25.08.2021.

context, making the ‘Law on the Rights of the Elderly’ for the rights of the elderly will be a positive development in terms of this right.

According to the information obtained from the official website of MFSS; there are 153 nursing homes affiliated to the General Directorate of Disabled and Elderly Services. As of January 2020, 13,925 people stay in these centers with a capacity of 15,527.⁸⁷ The increase in the number and capacity of nursing homes affiliated to the Ministry approximately 2.4 times, and the number of elderly people cared for by approximately 2.8 times compared to 2002 is considered as a positive development.

The lack of legal norms on the rights of the elderly, determined at the national level, is also in question in the international arena. HREIT carries out a text study that can be considered as a draft of the convention on the rights of the elderly.

2.12. Youth Rights

The “egalitarian, non-discriminatory and inclusive” nature of human rights creates some deprivations in accessing the rights of certain groups. In order to eliminate such deprivations, countries have adopted international instruments on the rights of certain groups, including ‘women, children and the people with disabilities’. Young people between childhood and adulthood are often vulnerable to discrimination in varying forms. Young people sometimes face difficulties in accessing education, quality employment, social protection and full access to civil and political rights. Considering the barriers faced by young people due to their age, a special protection mechanism is necessary to combat discrimination against young people and ensure equal access to rights.⁸⁸

Youth rights includes; ‘mobility; autonomy; sexual and reproductive health; formal and non-formal education; participation; employment and social protection; freedom of expression; freedom of religion and belief; non-discrimination’ areas.⁸⁹

Article 58 of our Constitution states; *“The State shall take measures to ensure the education and development of the youth into whose keeping our independence and our Republic are entrusted, in the light of positive science, in line with the principles and reforms of Atatürk, and in opposition to ideas aiming at the destruction of the indivisible integrity of the State with its territory and nation. The State shall take necessary measures to protect youth from addiction to alcohol and drugs, crime, gambling, and similar vices, and ignorance.”* With this provision, the protection of youth is guaranteed.

87 General Directorate of Services for the Disabled and Elderly, “Statistics Bulletin for the Disabled and Elderly 2020”, <https://www.ailevecalisma.gov.tr/media/40734/istatistik-bulteni-subat2020.pdf>, Access Date: 09.08. 2021

88 European Youth Forum, <https://tools.youthforum.org/youth-rights-info-tool/human-rights-and-young-people/> Access Date: 17.08.2021.

89 European Youth Forum, Report of the European Youth Forum Expert Group on Youth Rights, Brussels 2013, p. 5.

The main purpose of youth rights in the Eleventh Development Plan has been determined as “Ensuring that young people grow up with strong life skills, human and national values, and their active participation in economic and social life and decision-making mechanisms”. For this purpose, in the Plan;

- Encouraging, disseminating and making accessible cultural, scientific and sports activities that take young people out of the school-exam-job cycle, support their physical, social and cognitive development and innovative and entrepreneurial qualities,
- Developing programs that will encourage young people to turn to sports, cultural and artistic activities, especially science, technology, engineering and mathematics,
- Increasing the number of youth centers according to needs and developing partnerships with organizations that carry out similar activities,
- Activities to increase youth’s reading, understanding and thinking skills and leadership skills,
- Conducting awareness-raising activities and skill-strengthening programs on health, social media and legal literacy in schools, higher education student dormitories and youth centers

policy objectives have been envisaged.⁹⁰

The Covid-19 pandemic has had profound effects on youth rights, from “education to employment, from the right to health to the right of access, from the freedom of travel to the right of social security”.

The phenomenon of “youth employment” constitutes an issue that should be addressed within the scope of youth rights. It is seen that the phenomenon of unemployment in Türkiye is most effective on the young population. According to TURKSTAT’s “Youth with Statistics 2020” data, the youth labor force participation rate was 44.4% in 2019, while it was 39.1% in 2020. While the unemployment rate was 25.4% in 2019, it was 25.3% in 2020. While the rate of young people who are neither in education nor in employment was 26.0% in 2019, it showed an increasing trend with 28.3% in 2020. ⁹¹ Considering the aforementioned rates and the needs of the current labor market, comprehensive and holistic policies should be developed to reduce youth unemployment. The inclusion of young people, who cannot be involved in education and employment at the same time, is of critical importance for a qualified social life. More effective mechanisms to encourage youth participation in employment need to be established.

90 <https://www.sbb.gov.tr/wp-content/uploads/2019/07/OnbirinciKalkinmaPlani.pdf>, Access Date: 17.08.2021.

91 Youth with Statistics, 2020, <https://www.tuik.gov.tr/>, Access Date: 17.08.2021.

It was stated that the problem of “employment and education” regarding the right of youth came to the fore at the Türkiye Youth Summit that the Turkish Youth NGOs Platform (T-STK COGEP) was held on 12 July 2021.⁹²

One of the City Councils formed within the municipalities⁹³ duties is to increase the activities of children, youth, women and people with disabilities in social life and to enable them to take an active role in local decision-making mechanisms. Within the scope of this task, City Councils carry out activities to ensure the democratic participation of young people. This task undertaken by the City Councils serves to develop the right of youth within the framework of participatory understanding.

2.13. Disability Rights

Persons with disabilities are among the most prevalent and vulnerable groups on a global scale. According to the World Health Organization (WHO) data, people with disabilities account for 15% of the world’s total population, and more than one billion people live with some form of disability. According to the World Health Survey, compared to other individuals, disabled people are twice as disadvantaged in terms of finding health facilities, three times more in terms of accessing health services, four times more in terms of exposure to ill-treatment in health facilities, and half of people with disabilities will not be able to afford health care fees.⁹⁴

Disability is now recognized as a human rights issue. The approach, which considers the rights of persons with disabilities as an integral part of human rights law and adopts the equal participation of these individuals in all areas of social life with other individuals without discrimination, directs national and international policies and practices. With the demands and rights-based struggles of persons with disabilities, it has become a globally accepted approach that “disability is a human rights issue”. Now, instead of being seen as individuals in need of protection and help, about whom decisions are made by others, disabled individuals are accepted as “autonomous individuals with rights” who have authority and decision over their own lives.

In fact, article 25 of the UN Convention on the Rights of Persons with Disabilities aims to strengthen the right of persons with disabilities to reach the highest standard of healthcare without discrimination. However, very few countries provide services of sufficient quality for persons with disabilities.⁹⁵

92 <https://tgsp.org.tr/tr/haber/turkiye-genclik-zirvesi-2021-programi-ankara%E2%80%99da-gerceklesti> , Access Date: 17.08.2021.

93 <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=10687&MevzuatTur=7&MevzuatTertip=5> , Access Date: 17.08.2021.

94 WHO, “Disability and Health”, December 2020, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, Access Date: 09.08.2021.

95 WHO, “Disability and Health”, December 2020, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, Erişim tarihi: 09.08.2021.

The executive institution primarily responsible for the protection and promotion of the rights of people with disabilities and elderly individuals is the MFSS General Directorate of Services for the Disabled and Elderly. The General Directorate has prepared various guides, taking into account the Covid-19 pandemic, which continues to spread globally. These guides are; “Covid-19 Normalization Guide, Coronavirus Information Guide for the Elderly Aged 65 and Elderly People with Chronic Disease, Grief Support Guide, Coronavirus Guide for Families with Autistic Individuals, Coronavirus Information Guide for Individuals with Special Needs, Coronavirus Guide for Children with Autism, Coronavirus Reader Friendly Guide and Coronavirus Information Guide for Hearing Impaired Individuals and Their Families”. Guidelines prepared and published by the General Directorate in a process where information pollution is widespread contributed to the increase of awareness and people’s access to accurate information.⁹⁶

Disabled or elderly rights are at the forefront of areas that require the state to make positive discrimination and develop special policies. The Eleventh Development Plan has been prepared in a way to include sustainable development and inclusive growth, the disabled and the elderly, and the special needs of these individuals have been taken into account. Home Health Service, which was started for the first time in 2010 in accordance with the principle of ‘social state’ in our constitution, continues to be carried out with determination.

The areas where the fragility of disabled and elderly people are felt most intensely are centers where people are deprived of their freedom or taken under protection. Within the Human Rights Action Plan (2021-2023), Setting targets such as increasing the opportunities for seriously ill, elderly, pregnant or disabled convicts to execute their sentences in the residence, expanding the scope of alternative sanctions to short-term imprisonment, and extending the scope of probation and release for elderly and disabled convicts are noteworthy developments in this context.⁹⁷

It should be taken into account that the rights of the disabled are an important issue that concerns not only the individuals concerned, but also all segments of the society. It should be taken into account in the steps to be taken and the policies to be followed that the addressee of the problems regarding the rights of the disabled and the elderly and the people who are exposed to them are potentially all members of the society.

Another issue that should be evaluated within the scope of disability rights is “reasonable accommodation”. Despite the measures taken and the legal steps taken, disabled people in Türkiye are directly or indirectly exposed to discrimination and excluded from the workforce because reasonable adjustments are not made in the workplace. It is imperative to increase the frequency of employment of persons with disabilities in visible positions where they will

96 For detailed information, see. <https://www.aile.gov.tr/eyhgm/yayin-kaynak/> , Access Date: 25.08.2021

97 Ministry of Justice, Human Rights Action Plan, <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep02-03-202115-14.pdf> , Access Date: 09.08.2021.

have direct contact with members of society. In this context, positive measures to be taken in order to ensure the active participation of people with disabilities in all areas of social life on an equal basis with other individuals are of critical importance. It is important in this context that it is stipulated in the Human Rights Action Plan (2021-2023) that the employment of persons with disabilities in senior public administration and in public duties appropriate to their professions will be encouraged, but its implementation and the development of the employment rate from year to year will be determinative.⁹⁸

In order to establish accessible buildings and facilities, both central and local governments need to make more intense efforts. It is also important to start a comprehensive study in order to make the official websites of public institutions and organizations fully accessible. Currently, it has been observed that there are relatively few accessible corporate websites for people with disabilities.

Another issue that continues to be a problem for disabled, elderly and other vulnerable groups is the level of activities carried out to expand the provision of “people with disabilities/ accessible living spaces and services for all.” Due to the insufficient level reached, “Buildings, public spaces and transportation vehicles allocated for public use, including courthouses, will be made accessible, disabled and elderly-friendly, and smart applications that facilitate the lives of the disabled and the elderly will be expanded” activity target has been added to the Human Rights Action Plan.⁹⁹

It is important to put the Elderly Support Program (ESP)¹⁰⁰ into practice in all cities, to determine the criteria for benefiting from care services, and to increase the quality and quantity of the personnel working in the provision of care services.

HREIT organized a cartoon, story and poetry competition on the theme of “Disabled Rights in the Context of the Protection and Promotion of Human Rights” with the participation of secondary school (high school) students in all private and public schools affiliated to the Ministry of National Education, on the occasion of the “December 3 International Day of Persons with Disabilities”. With the said competition, it is aimed to gain students a rights-based perspective, raise awareness about the rights of the disabled, encourage full and equal enjoyment of all human rights and fundamental freedoms by the disabled, strengthen respect for their inherent dignity and raise awareness in all these areas. The winning works and their owners were announced in an online event held on 03 December 2020. The awards were handed over to the winners at a ceremony organized by the Provincial Directorates of National Education.¹⁰¹

98 Ministry of Justice, Human Rights Action Plan, p. 98.

99 Ministry of Justice, Human Rights Action Plan, p. 98.

100 <https://www.ailevecalisma.gov.tr/media/6716/yasli-destek-programi-yades-2017-uygulama-usul-ve-esaslari-kitabi.pdf> , Access Date: 24.08.2021.

101 <https://www.tihек.gov.tr/tihек-karikatur-oyku-ve-siir-yarismasi-sonuclari/> , Access Date: 09.08.2021.

2.14. Prohibition of Discrimination

The principle of non-discrimination and equality has a normative framework that is guaranteed at the national and supranational level. There is a comprehensive legal framework against general discrimination in our national legal system. So much so that, in addition to our Constitution, various laws including the Turkish Penal Code No. 5237, Law No. 5378 on the Disabled, Civil Servants Law No. 657, National Education Basic Law No. 1739 and Labor Law No. 4857 include equal recognition before the law and prohibition of discrimination. In addition, the Turkish Penal Code exclusively regulates hate crime, and article 122 of the relevant law, titled “hate and discrimination”, provides a penalty for hate crime.¹⁰²

The most comprehensive regulations in our national legislation regarding the prohibition of discrimination were made by the establishment of HREIT in 2016. Thus, by emphasizing that everyone is equal in benefiting from the legally recognized rights and freedoms, a critical step was taken towards institutionalization in the fight against discrimination. In addition, Türkiye has become a party to international and regional human rights conventions aimed at securing fundamental rights and freedoms and combating discrimination, and has made the relevant conventions a part of national legislation. However, despite the comprehensive legal framework established to ensure equality, legislative studies are required to provide a strengthened protection mechanism against discrimination.

As in 2019, the ECtHR has taken no decision against Türkiye regarding the violation of the prohibition of discrimination in 2020.¹⁰³ The Constitutional Court has four decisions regarding the violation of the prohibition of discrimination. The Constitutional Court concluded that in two of these decisions, the prohibition of discrimination was violated in relation to the right to property, and in the other two, in relation to the right to respect for family life¹⁰⁴

Among the applications made to HREIT within the scope of the prohibition of discrimination in 2020, there were 276 applications that passed the preliminary examination stage and were considered to be examined in terms of merits or the admissibility must be examined together with the merits. 228 of these applications are about the ‘Individual Basic Needs Support Loan’ opportunity brought under the ‘Economic Stability Shield Package’.

102 (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. See, https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf, Access Date: 24.08.2021

103 ECHR, Violations by Article and by State, https://www.echr.coe.int/Documents/Stats_violation_2019_ENG.pdf , Access Date: 10.08.2021

104 Constitutional Court, Annual Report 2020, May 2021. https://www.anayasa.gov.tr/media/7444/2020_yillik_rapor.pdf , Access Date: 25.08.2021.

An increasing trend has been observed in the applications made within the scope of this package and the applications made with the claim of discrimination on the basis of wealth. A reconciliation decision was made about one of the applications whose merits were examined in 2020, a decision of inadmissibility for five of them, and a decision of no violation for twenty-five. The number of decisions regarding the violation of the prohibition of discrimination was recorded as 12. It was decided that the prohibition of discrimination was violated in four of these decisions on the basis of gender, three on the basis of belief, one on the basis of political and philosophical views, and one on the basis of “gender and marital status”. In addition to the applications, 3 cases were examined ex officio by the Human Rights and Equality Board of Türkiye in 2020. It was decided that the prohibition of discrimination was violated in 2 of the 3 cases handled within the scope of the prohibition of discrimination, and there was no room for a decision on the other case. It was noted that in one of the cases where a violation decision was made, included discrimination on the basis of “belief and gender”, and in the other case harassment on the basis of “belief” was recorded.¹⁰⁵

The epidemic, which was declared a pandemic by WHO on March 12, 2020 and affected the whole world, has created deep breaks in fundamental rights and freedoms and especially the prohibition of discrimination on a global scale, in addition to being a serious public health crisis. While disadvantaged groups have become more vulnerable to the pandemic, the implementation of the measures taken within the scope of combating the pandemic in a way that does not cause discrimination between different groups of people and leaving no one behind in the pandemic (*Leaving No One Behind*) have been the issues that widely emphasized and controversial on a global scale.

In 2020, Türkiye continued to make significant efforts to secure the rights of immigrants and asylum-seeking children to education, health and protection.¹⁰⁶ Immigrant Health Centers continued to be established in order to provide more effective primary health care services for the people in question and to overcome the problems arising from language and cultural barriers. In order to increase accessibility, guides and brochures on the Covid-19 pandemic have been translated and published into English, Persian and Arabic languages. For the integration of refugee children in the curriculum, the Board of Education and Discipline approved the Curriculum of Turkish as a Foreign Language with its decision dated 11/11/2020 and numbered 36. On the other hand, it has been noted by NGOs that refugee children have difficulties in adapting to schools due to language barrier and discriminatory peer bullying.¹⁰⁷ Despite the comprehensive arrangements for refugees and persons under temporary protection, hate speech towards these persons tends to increase. In 2020, the authorities

105 TİHEK 2020 Annual Report, p. 68-69

106 European Commission, “Turkey 2020 Report”, Brussels 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/turkey_report_2020.pdf, Accessed on: 11.08.2021.

107 Association for Solidarity with Asylum Seekers and Migrants (SGDD-ASAM), letter dated 16/02/2021 and numbered SGDD/2021/232

launched an investigation due to the posters saying, “I will not deliver Fatih to the Syrians”.¹⁰⁸ Hate speech towards Syrians under temporary protection, especially in social media, has an increasing trend. The interactive nature of social media also makes it possible for hate speech to emerge¹⁰⁹ and spread rapidly. The fact that social media creates a suitable channel for information pollution makes the measures to be taken at this point even more important.

Citizens of Romani origin, who were historically among the poorest parts of the country, living under poor housing conditions and facing socio-economic barriers in accessing public services, especially education, became even more vulnerable during the pandemic. As a matter of fact, the lack of distance education tools such as “tablets, internet and computers” caused problems in accessing these children’s distance education activities.¹¹⁰ In 2020, the news that the tents of Roma citizens were destroyed and they became homeless were reflected in the media.¹¹¹ As the Covid-19 pandemic first emerged in China, content containing hate speech in different forms, such as humiliation and symbolization, has become widespread in social media.

The year 2020 witnessed the violence of ageism, including in its deadliest forms, associated with the global Covid-19 pandemic. In some countries, practices such as discriminating among those caught with Covid-19 by determining priority levels and not treating the elderly (triage) came to the fore¹¹², while inhuman attitudes such as high mortality rates due to the pandemic and leaving the elderly to die in their homes were displayed in institutions serving the elderly such as nursing homes.¹¹³ Türkiye, on the other hand, started to take precautions in nursing homes before any Covid-19 cases were recorded, provided treatment services to everyone regardless of age or any other discrimination¹¹⁴, and established “Vefa” social support groups under the coordination of governorships and district governorships to meet the needs of the elderly in their homes.¹¹⁵ By extending the duration of the health reports of people over the age of 65, it has been ensured that chronic diseases, disability reports and drugs, medical and other materials that require continuous use can be obtained from pharmacies and medical centers without going to a health institution and writing a prescription.

108 <https://www.sabah.com.tr/gundem/2020/10/22/iyi-parti-kurucusuna-nefret-sorusturmasi-sosyal-medyada-kin-ve-nefret-kusuyor> , Accessed on: 08.08.2021.

109 Kuş, Oğuz, “Covid-19 Pandemic and Digital Hate Speech Against Refugees: Analysis of User-Generated Content from Big Data Perspective with Text Mining Technique”, TRT Academy , c. 6, p. 11, 2021, p. 114

110 <https://www.romanmedya.org/roman-cocuklara/> , Access Date: 11.08.2021.

111 <https://www.milliyet.com.tr/gundem/cesmede-romanlarin-cadirlari-kaldirildi-6236575> , Access Date: 11.08.2021.

112 <https://www.trthaber.com/haber/gundem/koronavirus-italyada-savas-triaji-baslatabilir-467357.html> , Access Date: 11.08.2021.

113 <https://www.sabah.com.tr/dunya/2020/03/24/ispanyadan-soke-eden-haber-yasli-lari-evlerinde-olume-terk-ediyorlar> , Access Date: 11.08.2021.

114 <https://tr.euronews.com/2020/05/11/dso-nun-dunyaya-ornek-gosterdigi-turkiye-nin-huzurevlerinde-ald-g-onlemler-ve-basar-nedenl> , Access Date: 10.08.2021.

115 <https://www.icisleri.gov.tr/vefa-sosyal-destek-grubuyla-569-bin-hanenin- ihtiyaclari-temin-edildi> , Access Date: 08.08.2021.

The fact that the elderly are at serious risk from the virus necessitated taking more measures to protect them. In this context, with the circular published by the Ministry of Interior on March 21, 2020, a curfew was introduced for people over the age of 65.¹¹⁶ Although it is aimed to protect the elderly from the risk of disease, the uncertainty of the implementation period of the measure; the elderly become dependent on others to meet their basic needs; Demands for meeting social, cultural, physical, mental and spiritual needs have brought discrimination on the basis of age to the agenda. In line with the increasing demands and the aim of responding to the needs of the elderly, with the Circular dated May 29, 2020¹¹⁷, the curfew was relaxed and it was regulated that people over the age of 65 could go out on certain days and hours, provided that they were limited to walking distance, obeying the distance rule and wearing a mask,¹¹⁸ and exceptions were made to travel bans. Thus, the social, cultural, physical, mental and spiritual needs of the elderly were tried to be met.

Another important issue that needs to be emphasized is that the said measures aimed at protecting the elderly and controlling the pandemic lead to an increase in the discriminatory treatment and social exclusion of the elderly in the society in a short time. In this process, elderly people were accused of not complying with protective measures adequately, ignoring their own and public health, and became the target of more prohibitive measures. Age discrimination has shown an increasing trend during the pandemic process, with discourses such as “the elderly are spreading the virus because they do not wear masks”.¹¹⁹

With the Covid-19 pandemic, stigmatization related to health status and, parallel to this situation, discrimination on the basis of health gained importance. Healthcare workers who are in direct contact with the disease, persons who have been in quarantine/hospital and recovered due to illness/suspected illness and their families have faced situations where they are stigmatized and discriminated against as if they have the disease and/or spread it. In addition, poor people with limited access to hygiene materials, working and/or living in crowded places may be exposed to discriminatory treatment or discourse on the grounds that they do not take the necessary precautions.¹²⁰

The will to protect the freedom of religion and belief continued in 2020 as well. The construction work of the second church, which was requested by the Assyrian community in Istanbul, started in August 2019 and continues in 2020.¹²¹ The annual rituals, which have been suspended for 5 years due to the restoration works in the Sümela Monastery, have been

116 <https://www.icisleri.gov.tr/65-yas-ve-ustu-ile-kronik-rahatsızlığı-olanlara-sokaga-cikma-yasagi-genelgesi> , Access Date: 09.08.2021.

117 <https://www.resmigazete.gov.tr/eskiler/2020/05/20200529M1-1.pdf> , Access Date: 25.08.2021.

118 <https://www.icisleri.gov.tr/81-il-valiliginde-18-yas-alti-ile-65-yas-ve-uzeri-kisilerin-sokaga-cikma-kisitlamasi-genelgesi> , Access Date: 09.08.2021.

119 Başterzi, Ayşe Devrim; Cesur, Ender; Güvenç, Hasibe Rengün, et al. “Covid-19 and Stigma”, TTB Covid-19 Pandemic Sixth Month Evaluation Report, 2020.

120 Başterzi, Ayşe Devrim; Cesur, Ender; Güvenç, Hasibe Rengün, et al. “Covid-19 and Stigma”

121 <https://www.bbc.com/turkce/haberler-turkiye-49220503>; <https://www.cnnurk.com/turkiye/cumhuriyet-tarihinin-ilk-suryani-kilisesinin-insaatinda-son-durum?page=2>, Access Date: 11.08.2021.

reorganized as of August 15, 2020.¹²² It has been regulated by the 2019 “Republic of Türkiye Identity Card Regulation” that religion information will be included in the case of people’s request by removing the religion section on the identity cards, which is also the subject of ECtHR decisions.¹²³ An investigation has been launched into the writings against Alevis on the garden wall of an apartment building in Pendik, Istanbul.¹²⁴

In 2020, HREIT determined that the applicants, who were not taken to the complex pool because they were wearing hijab swimsuits, were discriminated against on the basis of belief, on a site they visited for a holiday. On the broadcast of a television channel, the program host made statements about the teacher wearing a headscarf, who taught the first day lesson on “EBA Television”, as “it is wrong to give a teacher wearing a headscarf as a role model to millions of students, the ideal teacher image is not wearing a headscarf and it is a disaster to start (lessons) with a teacher wearing a headscarf”. Applications were made to HREIT with the allegations that these statements broadcast on the television channel violated the prohibition of discrimination and insulted religious values. In line with the aforementioned applications, an ex officio investigation was initiated against the TV channel and the presenter regarding the decision of the Human Rights and Equality Board of Türkiye, and as a result of the examination, it was decided that the prohibition of discrimination on the basis of belief and gender was violated. Again, the Human Rights and Equality Board decided to examine ex-officio the statements of the former Deputy Secretary General of a municipality about headscarved workers, which were also reflected in the press, and it was concluded that the prohibition of discrimination on the basis of belief was violated. The decision found wide coverage in the media.¹²⁵

In 2020, important steps continued to be taken regarding the protection of persons with disabilities from discrimination. During 2020, efforts were made to make public spaces, natural parks, places of worship and websites accessible to people with disabilities. In this context, 128 schools have been made accessible for students with physical disabilities. Public awareness of the accessibility of public transport and other services is also increasing, thanks to public and private initiatives. On the other hand, within the scope of Covid-19 measures, a restriction was imposed on the travel of disabled individuals on High Speed Train (YHT), Mainline and Regional trains by the Ministry of Transport and Infrastructure on 8 July 2020. The said measure taken for disabled passengers was lifted on 21 July 2020, especially after the reactions of NGOs.¹²⁶

122 <https://www.haberturk.com/trabzon-haberleri/79999615-sumela-manastirinda-5-yil-aradan-sonra-ilk-ayin-15-agustosta-gerceklestirilecekortodoks> , Access Date:11.08.2021.

123 Republic of Turkey Identity Card Regulation, Official Gazette dated 3 December 2019 and numbered 30967, art. 17/2.

124 <https://www.aa.com.tr/tr/turkiye/istanbulda-alevi-vatandaslara-yonelik-yazilarla-ilgili-sorusturma-baslatildi/2015280> , Access Date: 10.08.2021.

125 <https://www.aa.com.tr/tr/turkiye/basortulu-personele-ayrimcilik-iddiasıyla-gundeme-gelen-eski-ibb-genel-sekreter-yardimcisina-ceza/2122366> , Access Date: 25.08.2021

126 <http://www.sahimsen.org.tr/yuksekk-hizli-tren-yht-seferlerinde-engellilere-uygulanan-kota-uygulamasina-acilen-son-verilmesi-hakkinda-acik-cagiri-icerik-297> , Access Date: 25.08.2021.

HREIT examined the fact that a large area was closed to pedestrian and vehicle traffic by the Istanbul Governorship in 2020 and that alternative routes were not created for orthopedically people with disabilities and wheelchair users within the scope of accessibility and decided that the prohibition of indirect discrimination on the basis of disability was violated. In 2020, the financial support plan for the home care of people with disabilities in need continued to be implemented. Children with disabilities benefit from public health services, benefits, rehabilitation and physiotherapy services, regular allowances, caregiver benefits and free school transport. Due to the Covid-19 pandemic, improvements were made to make the education services offered through the EBA system accessible to visually impaired students, and sign language translation was provided for hearing impaired students. Additional measures have been taken to ensure that children with special educational needs, such as students with mental retardation or autism, can access distance education.¹²⁷

During the pandemic period, effective measures were taken to prevent the epidemic in the disabled care centers, and the right to life and health of the people in these institutions was guaranteed. For the protection of people with disabilities who are at high risk for the Covid-19 virus, the reports of people with a temporary disability report were accepted as valid. In the pandemic conditions, mental health services support was provided to children with special needs and their families.

However, despite all the important and concrete steps, there are still steps to be taken to ensure the full and effective participation of people with disabilities in social life in all areas of life. Institutional care services for people with disabilities maintain their importance. More personal and social support is needed for people with disabilities to live independently in society.

There is currently no “mental health law” in our national legislation. The legislation, which particularly affects individuals with mental and psychosocial disabilities, needs to be revised in terms of the principle of equality and other fundamental rights. The first “National Plan of Action for Individuals with Autism Spectrum Disorders (2016-2019)¹²⁸” expired in 2019 and has not yet been renewed. Awareness on disability, non-discrimination, the right to inclusive education, accessibility and reasonable regulation obligation should be increased at all levels in the field of education.

In 2020, HREIT handled the application regarding the violation of the prohibition of discrimination due to the rejection of reasonable accommodation requests by students with disabilities and/or their parents. In the application regarding the allegation that the request of MMA, a 40% hearing-impaired third-year mainstreaming student studying at

127 See. Chapter 7: The Right to Education.

128 <https://www.resmigazete.gov.tr/eskiler/2016/12/20161203-16.htm> , Access Date: 24.08.2021.

the Primary School, to receive individual support education outside of class hours, by the P. District Governorship District Directorate of National Education, violated the prohibition of discrimination, it was decided that the applicant had violated the prohibition of discrimination on the basis of disability.¹²⁹ It was determined that the applicant was exposed to the prohibition of discrimination on the basis of disability, regarding the application made to the Institution with the claim that he did not use the closest and most effortless means of transportation as a disabled person at the rate of 50%, and that the practice made without creating an alternative constitutes indirect discrimination for people with disabilities.¹³⁰

Action plans are accepted and implemented by public institutions and organizations, especially MFSS, in order to ensure equality between women and men. Many projects are being implemented for this purpose. However, despite all these efforts and remarkable developments, there are problem areas regarding gender equality. Discrimination based on gender in diversified forms in employment continues to exist as an important problem area. There are 3 decisions of HREIT that it has determined that women are exposed to discrimination in the field of employment. Two of them are about the negative conclusion of job interviews due to pregnancy, and the other is about bullying at work related to pregnancy.¹³¹ Some of the applicants, who applied to HREIT in 2020, alleging that they were discriminated against because of their gender, were male.¹³² One of these applications concerns the fact that the applicant, who applied to rent an apartment, was not rented because he was a male. In its decision on the application, HREIT determined that a different treatment was given without an objective and reasonable reason and decided that the prohibition of discrimination was violated.¹³³

In the Law No. 6701, mobbing is defined as “acts done intentionally to alienate, exclude, or tire a person from his/her job”. Intimidation/mobbing in the workplace emerges as an important problem area. Within the scope of combating mobbing, more than a hundred thousand mobbing calls made to the ALO 170 line established within the scope of the Ministry of Labor and Social Security between 19.03.2011 and 31.12.2020, the support given to 11346 people in 2020 reveals the existence of the problem in question.¹³⁴ With the 6th article of Law No. 6701, a clear provision prohibiting discrimination in all processes of working life has been introduced. In this framework, deliberate actions to alienate, exclude and tire the person

129 For detailed information on the decision, see Turkish Human Rights and Equality Institution Board Decision No. 2020/183, https://www.tihek.gov.tr/upload/file_editor/2020/09/1600975777.pdf, Access Date: 24.08.2021.

130 For detailed information on the decision, see Turkish Human Rights and Equality Institution Board Decision No. 2020/182, https://www.tihek.gov.tr/upload/file_editor/2020/09/1600975394.pdf, Access Date: 24.08.2021

131 TURKSTAT, “Women with Statistics”

132 For more detailed information on the applications, see. Human Rights and Equality Institution of Turkey, 2020 Annual Report.

133 Turkish Human Rights and Equality Institution Board Decision No. 2020/221, https://www.tihek.gov.tr/upload/file_editor/2021/02/1612790214.pdf, Access Date: 24.08.2021.

134 <https://www.sabah.com.tr/gundem/2021/02/16/mobbinge-taviz-yok-mobbinge-mucadele-meyvesini-veriyor>, Access Date: 09.08.2021.

from their job on the basics of discrimination listed as “gender, race, color, language, religion, belief, sect, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health status, disability and age” are prohibited by Law No. 6701. Mobbing allegations have an important place in individual applications made to our Institution in 2020. Because, one of the applications in which HREIT determined that the prohibition of discrimination was violated in 2020 is related to mobbing on the basis of gender.¹³⁵ In this context, it is important for everyone to have a decent, healthy and peaceful working environment and conditions, and to fight mobbing in the workplace more effectively.

2.15. Counterterrorism

The grievances caused by the terror problem, which our country has been fighting for decades, lead to human rights violations. The phenomenon of terrorism, which violates the human rights of both law enforcement officers and civilians in many respects, especially the right to life, constitutes one of the most fundamental problem areas that need to be solved first in terms of protecting and strengthening human rights. The activities of terrorist organizations lead to a wide range of human rights violations, ranging from ‘violation of the prohibition of slavery and servitude to damage to public and private property, from actions that disrupt education to activities that prevent travel’.

Fighting terrorist organizations, which are a major problem and potential threat in terms of human rights, has been one of the most fundamental priorities in our national legal order in 2020, as it has been in recent years. Continuing its struggle against many organizations such as Fethullahist Terrorist Organization (FETO), PKK, YPG, DHKP-C, and TİKKO simultaneously, Türkiye has started to reap the results of its determined struggle at this point. The activities, actions and threat potential of terrorist organizations, especially the aforementioned organizations, have decreased incomparably. As a result of this effective struggle, participation in organizations tended to decrease substantially.

The fight against terrorism continued in 2020, both at home and abroad, uninterruptedly and resolutely. As a result of the determined struggle against the members of the terrorist organization PKK both at home and abroad, the movement and action capability of the organization at home and abroad has been reduced. The steady decline in participation in the organization continued in recent years. Only 52 people joined the organization in 2020. “Effective military operations, limitation of the propaganda resources of the organization and social studies” had an impact on this decline.

In 2020, the fight against FETO continued decisively. Numerous operations were carried out against both the secret organizations of the organization in the country and its

¹³⁵ For detailed information on the decision, see Turkish Human Rights and Equality Institution Board Decision No. 2020/267, https://www.tihek.gov.tr/upload/file_editor/2021/02/1613739793.pdf, Access Date: 24.08.2021.

members and structures abroad. In the operations carried out abroad, many members of the organization were caught and brought to Türkiye, and the trial of these people began.

The sit-in action of Diyarbakır Mothers, a group that is holding a sit-in against the Peoples' Democratic Party (HDP) in the hope of reuniting with their children who were deceived or kidnapped by the PKK, is taking place in front of the HDP's Diyarbakır Provincial Presidency building. The watch of the mothers of Diyarbakır, whose children were detained by the terrorist organization and who fought hard to get them back, has been going on for 724 days.¹³⁶ As a result of the actions taken, many families reunited with their children over time.¹³⁷

The virus, which was first detected in Wuhan, China's Hubei province in December 2019, and named as Covid-19, affected the whole globe in a very short period of time. So much so that in about a month, the new type of coronavirus went beyond being an epidemic and turned into a pandemic. Countries have implemented different strategies to combat the pandemic, which deeply affects the global world order. While some countries preferred to switch to extraordinary legal regimes in the fight against the epidemic, some countries decided to continue the struggle with the usual legal regimes.

Article 119 of our Constitution contains the provision of ; "In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months." Within the scope of the relevant article, the President is authorized to declare a state of emergency in the fight against the epidemic. However, the state of emergency regime was not preferred during the pandemic process in our country.

The measures taken in the fight against Covid-19 have created a crisis area on basic human rights. Since the state of emergency has not been declared in our national legal system in this period, the measures taken must be taken in accordance with the provision in Article 13 of the Constitution that; "These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality."

136 <https://www.aa.com.tr/tr/diyarbakir-annelerinin-evlat-nobeti/diyarbakir-anneleri-700-gundur-evlatlari-icin-nobette-/2321980> , Access Date: 28.08.2021.

137 <https://www.trthaber.com/haber/turkiye/bir-anne-daha-evladina-kavustu-604886.html> Access Date: 28.08.2021.

According to Article 15 of our Constitution; “In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.” While there is a legal basis for states to suspend some human rights obligations in times of emergency, obligations regarding some fundamental rights cannot be suspended. In extraordinary times such as the pandemic period, states have a responsibility not to apply emergency measures in a “discriminatory” manner. Depending on the perspective envisaged by international human rights, governments have to take special steps to take into account the impact of the emergency situation especially on the “disadvantaged groups” and to minimize the disproportionate effects on the vulnerable groups concerned.¹³⁸

In practice, it is seen that most of the measures taken during the fight against the Covid-19 pandemic pose a problem in terms of legal basis. There is no general restriction ban on rights in our national legal system. Therefore, general health or public health should be included as a clear reason in the provision of the relevant article regarding the categories of rights restricted in this period. It is obvious that the curfews and travel restrictions applied during the pandemic period are in the nature of interference with the freedom of travel. In Article 23 of our Constitution, ‘general health or public health’ is not counted as a reason for restriction. A similar situation applies to the freedom of contract in terms of the prohibition of dismissal, and the right to a fair trial in terms of stopping the proceedings.

In terms of our constitutional system, it has been regulated that fundamental rights and freedoms are strictly protected in ordinary periods and that intervention can only be made if they comply with the conditions in Article 13. Since the state of emergency has not been declared, the rules of the ordinary period remain valid and the restrictions to be imposed must be made according to these criteria.

Undoubtedly, it is imperative to take some measures in order to eliminate the threats and dangers posed by the Covid-19 pandemic. However, the necessity of the measure in a democratic state of law does not make all the measures taken or to be taken for this purpose, as a whole, in accordance with the law. These restrictions, which are medically necessary and even mandatory, must meet the prescribed criteria in order to comply with the law. The Public Health Law No. 1593, dated April 4, 1930¹³⁹, which constituted the basis for the said measures and the Provincial Administration Law No. 5442 dated 10 June 1949¹⁴⁰ are obviously insufficient. Therefore, the “Pandemic Law” should be enacted in order to prevent similar problems in the fight against the Covid-19 pandemic and in terms of future projection.

138 Rights and Security International, “Covid-19: Toolkit For Civil Society Partners”, p.20.

139 <https://www.mevzuat.gov.tr/MevzuatMetin/1.3.1593.pdf>, Access Date: 10.08.2021.

140 <https://www.mevzuat.gov.tr/MevzuatMetin/1.3.5442.pdf>, Access Date: 10.08.2021.

2.16. The Legality of the Measures Taken in the Fight against the Covid-19 Pandemic

The virus, which was first detected in Wuhan, China's Hubei province in December 2019, and named as Covid-19, affected the whole globe in a very short period of time. So much so that in about a month, the new type of coronavirus went beyond being an epidemic and turned into a pandemic. Countries have implemented different strategies to combat the pandemic, which deeply affects the global world order. While some countries preferred to switch to extraordinary legal regimes in the fight against the epidemic, some countries decided to continue the struggle with the usual legal regimes.

Article 119 of our Constitution says "In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months." Within the scope of the relevant article, the President is authorized to declare a state of emergency in the fight against the epidemic. However, the state of emergency regime was not preferred during the pandemic process in our country.

The measures taken in the fight against Covid-19 have created a crisis area on basic human rights. In our national legal system, due to the fact that the state of emergency was not declared in this period, the measures taken must be taken in accordance with the provisions were stated in Article 13 of the Constitution: "These restrictions cannot be contrary to the word and spirit of the Constitution, the requirements of the democratic social order and the secular Republic, and the principle of proportionality."

According to Article 15 of our Constitution "In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated." While there is a legal basis for states to suspend some human rights obligations in times of emergency, obligations regarding some fundamental rights cannot be suspended. In extraordinary times such as the pandemic period, states have a responsibility not to apply emergency measures in a "discriminatory" manner. Depending on the perspective envisaged by international human rights, governments have to take special steps to take into account the impact of the emergency situation especially on the "disadvantaged groups" and to minimize the disproportionate effects on the vulnerable groups concerned.

In practice, it is seen that most of the measures taken during the fight against the Covid-19 pandemic pose a problem in terms of legal basis. There is no general restriction ban on rights in our national legal system. For this reason, general health or public health should be included as a clear reason in the provision of the relevant article regarding the categories of rights restricted in this period. It is obvious that the curfews and travel restrictions applied during the pandemic period are in the nature of interference with the freedom of travel. In Article 23 of our Constitution, 'general health or public health' is not counted as a reason for restriction. A similar situation is valid for the freedom of contract in terms of the prohibition of dismissal, and the right to a fair trial in terms of stopping the proceedings.

In terms of our constitutional system, it has been regulated that fundamental rights and freedoms are strictly protected in ordinary periods and that intervention can only be made if they comply with the conditions in Article 13. Since the state of emergency has not been declared, the rules of the ordinary period remain valid and the restrictions to be imposed must be made according to these criteria.

Undoubtedly, it is imperative to take some measures in order to eliminate the threats and dangers posed by the Covid-19 pandemic. However, the necessity of the measure in a democratic state of law does not make all the measures taken or to be taken for this purpose, as a whole, in accordance with the law. These restrictions, which are medically necessary and even mandatory, must meet the prescribed criteria in order to comply with the law. It is obvious that the Public Health Law dated 4 April 1930 and numbered 1593 and the Provincial Administration Law dated 10 June 1949 and numbered 5442, which constitute the basis for the said measures, are insufficient. Therefore, the "Pandemic Law" should be enacted in order to prevent similar problems in the fight against the Covid-19 pandemic and in terms of future projection.

2.17. Administrative Claim Mechanisms and Effectiveness

In terms of the existential dynamic of a democratic society, the principle of "openness to the judiciary against all kinds of actions and actions of the administration" functions as a protection and assurance mechanism for the field of rights and freedoms. Administrative claim mechanisms, which have become widespread on a global scale, are expressed as a means of non-judicial control against actions and transactions between the administration and individuals that lead to human rights violations. The said administrative mechanisms have been developed as an alternative to the judicial mechanisms within the framework of the freedom to seek rights. Administrative mechanisms of this type have many advantages such as "quick decision making, facilitating access to justice services and being free".

In this context, many administrative rights-seeking mechanisms have been established in our national legal system. Most such mechanisms, which have been made part of our national legal system, do not have binding executive decision-making powers. However, these mechanisms undertake critical missions within the framework of raising awareness of

human rights in the public and solving problems through consensus. In order to protect and develop human rights in Türkiye, many administrative rights seeking mechanisms such as HREIT, Ombudsman Institution, provincial and sub-provincial human rights boards, patient rights boards, law enforcement surveillance commission and prison monitoring boards' are in operation.

HREIT performs the duties of protecting and promoting human rights, combating discrimination and NPM within the scope of OPCAT in accordance with Law No. 6701. The Institution has the authority to conduct ex-officio investigations in the field of human rights. In addition, it presents annual reports to the government and the TGNA and gives advice on problematic areas. Within the scope of NPM, regular and unannounced visits are made to centers where people are deprived of their liberty or taken under protection. HREIT presented the "2019 Report on the Protection and Promotion of Human Rights" to the Presidency and the Parliament in 2020 and shared the relevant report with the public.¹⁴¹

HREIT had to reduce the frequency of its visits within the scope of NPM in order to protect the health of both detainees and its personnel during the pandemic period. In 2020, 12 detention and/or protection centers were visited, considering the type of institution and geographical distribution. In this context; Visits were made to a total of 12 places of detention or protection, including 4 prisons, 2 detention centers, 2 removal centers, 2 children's homes, 1 nursing home and 1 disabled care centre. Informative contents regarding the rules to be followed during the pandemic period were sent to the relevant centers by HREIT.

Another administrative claim mechanism in our national legal system is the Ombudsman, which examines and researches all kinds of actions and transactions of the administration, and their attitudes and behaviors in terms of compliance with the law and fairness, with an understanding of justice based on human rights. Ombudsman makes recommendations to the relevant institutions regarding the said actions and transactions. As a result of the Ombudsman recommendations regarding the functioning of the administration, it is seen that many problems have been solved by practical methods. Ombudsman has fulfilled its duties in the law, within the possibilities, during the pandemic period.¹⁴²

Another administrative right-seeking mechanism that will be mentioned within the scope of the report is the provincial and district human rights boards. The said boards are institutional structures established within the governorship and district governorship, respectively, in all provinces and districts. The working procedures and principles of the boards are determined by the "By-Law on the Establishment, Duties and Working Principles

141 See Human Rights and Equality Institution of Turkey, 2019 Report on the Protection and Promotion of Human Rights, https://www.tihek.gov.tr/upload/file_editor/2020/12/1608249600.pdf, Access Date: 24.08 .2021.

142 Ombudsman Institution Law No. 6328, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6328.pdf>, Access date: 24.08.2021.

of Provincial and District Human Rights Boards”¹⁴³ published in the Official Gazette dated 23/11/2003 and numbered 25298.

In the Provisional Article 1 of HREIT Law No. 6701, “Provincial and district human rights boards shall continue to operate until a new regulation is made by the Presidency.” In accordance with the provision, the authority to regulate the provincial and district human rights boards rests with the Presidency. However, this regulation does not mean that the duties of the committees have ended. The regulation envisaged at this point is for the continuation of the work of the boards with the revision to be made. During the reporting process, all provincial and district human rights boards were contacted and their problems, needs and demands were received. In this context, ‘the relatively old and insufficient legislation, the lack of independent and autonomous personnel and budget, the failure to pay attendance fees to the members of the board’ were recorded as the most basic problem areas. Applications to Provincial and District Human Rights Boards are mostly received through human rights boxes placed at various points in cities. The application procedure in question shows that digital opportunities are not used effectively. For this reason, it is necessary to make necessary arrangements regarding the problem areas of the provincial and district human rights boards that we have mentioned.

Provincial and district human rights boards have significant advantages in solving local problems. Local authorities are in a more advantageous position when compared to central authorities in terms of both identifying the problem and solving it. Due to all these advantages, the reorganization of the provincial and district human rights boards with the regulation to be made by the Presidency, in accordance with the provision in the Provisional Article 1 of the HREIT Law No. 6701; “Provincial and district human rights boards shall continue to operate until a new regulation is made by the Presidency” is required.

Another administrative mechanism operating in our national legal system is the law enforcement oversight commission. The purpose of establishment of the Commission; ‘to improve the working conditions of law enforcement officers and to convey the suggestions, requests and complaints of citizens regarding law enforcement services.’ The commission determines the principles regarding the functioning of the law enforcement complaint system and can request disciplinary investigations by the competent authorities when necessary. The Law Enforcement Surveillance Commission, of which the HREIT President is also a member, carried out on-site investigations regarding the naked search claims in Uşak Province in 2020.¹⁴⁴

In Türkiye, there are many administrative legal mechanisms other than the ones mentioned above, at the national or local level. “Patient rights units established within

143 <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6305&MevzuatTur=7&MevzuatTertip=5>, Access Date: 10.08.2021.

144 <http://www.kollukgozetim.gov.tr/kolluk-gozetim-komisyonu-24-aralik-2020-de-usak-ilinde-toplandi>, Access Date: 24.08.2021.

the hospital, prison monitoring boards, the Human Rights Department of the General Directorate of Security, the Human Rights Commissions established under the Council of State and the Supreme Court” can be cited as examples of administrative rights seeking mechanisms in Türkiye. Although there are some problem areas regarding the administrative mechanisms in question, it is possible to say that Türkiye is constantly developing in terms of the institutionalization of human rights. The existence of these mechanisms is important especially for the establishment of human rights awareness in society and the construction of a rights-based society.

Human rights are a set of rules that are valid not only in state-individual relations, but also in inter-individual relations and which must be complied with. The fact that the rules of human rights are also valid in the relations between individuals is expressed as the “horizontal effect”. Violations that occur in the relations between the persons in question are also called “horizontal violations”. It is accepted that the state is responsible for such violations.¹⁴⁵ The state’s responsibility for horizontal violations stems from its obligation to protect and strengthen human rights. States have to take preventive and restorative measures to protect and strengthen human rights.

Many actors have responsibilities in the protection and promotion of human rights. The leading actor in the protection and promotion of human rights is undoubtedly the state. States have a supreme responsibility within the framework of a triple typology, which is the obligation to respect human rights, protect human rights and fulfill human rights.¹⁴⁶

However, in the protection of human rights, besides the states, there are also diversified stakeholder actors such as NGOs, universities, political parties and local governments.

Another actor in the protection and promotion of human rights is NGOs. NGOs serve this purpose with various activities such as raising awareness by sharing expectations and comments on international human rights practices in the country with the public, monitoring and evaluating the measures taken by local and central governments, contributing to decision-making mechanisms and contributing to the monitoring activities of human rights mechanisms.¹⁴⁷

Local governments, which carry out various policies in order to meet the local common needs of the citizens, constitute another actor in the protection and strengthening of human rights. Especially during the pandemic period, local governments have carried out activities and policies regarding the rights of the vulnerable segments of the society.

145 Knox, John H., “Horizontal Human Rights Law”, *The American Journal of International Law*, Vol. 102, Nu.1, 2008.

146 This typology was formulated in UN Doc E/CN.4/Sub.2/1987/23 (paragraphs 67-68-69).

147 United Nations, “The Civil Society Area and the United Nations Human Rights System”, https://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSysGuide_Turkish.pdf, Access Date: 15.08.2021.



3. HORIZONTAL
RESPONSIBILITY IN HUMAN
RIGHTS AND
MULTI-ACTOR APPROACH
TO HUMAN RIGHTS

03

BÖLÜM



3. HORIZONTAL RESPONSIBILITY IN HUMAN RIGHTS AND MULTI-ACTOR APPROACH TO HUMAN RIGHTS

Human rights are a set of rules that are valid not only in state-individual relations, but also in inter-individual relations and which must be complied with. The fact that human rights rules are also valid in relations between individuals is expressed as “horizontal effect”. Violations that occur in the relations between the persons in question are also called “horizontal violations”. It is accepted that the state is responsible for such violations. The responsibility of the state resulting from horizontal violations arises from its obligation to ‘protect and strengthen human rights’. States have to take preventive and restorative measures to protect and strengthen human rights.

Many actors have responsibilities in the protection and promotion of human rights. The leading actor in the protection and development of human rights is undoubtedly the state. States have a supreme responsibility within the framework of a triple typology: “respect for human rights, obligations to protect human rights and fulfill human rights”.¹⁴⁸ However, in the protection of human rights, besides the states, there are also diversified stakeholder actors such as ‘NGOs, universities, political parties and local governments’.

Another actor in the protection and promotion of human rights is NGOs. NGOs serve this purpose with various activities such as ‘raising awareness by sharing expectations and comments on international human rights practices in the country with the public, monitoring and evaluating the measures taken by local and central governments, contributing to decision-making mechanisms and contributing to the monitoring activities of human rights mechanisms’.¹⁴⁹

Local governments, which carry out various policies in order to meet the local common needs of the citizens, constitute another actor in the protection and strengthening of human rights. Especially during the pandemic period, local governments have carried out activities and policies regarding the rights of the vulnerable segments of the society.

148 This typology has been formulated in UN Doc E/CN.4/Sub.2/1987/23 (paragraphs 67-68-69).

149 United Nations, “Civil Society Space and the United Nations Human Rights System”, https://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSysstem_Guide_Turkish.pdf, Accessed On: 15.08.2021.

A conceptual image featuring a central white horizontal banner with the word "HUMAN" in a serif font. The banner is set against a solid pink background. Four hands are visible, reaching towards the banner from different directions. A large, hairy hand from the top left is about to touch the banner. A hand from the top right is also reaching towards it. From the bottom, two hands are reaching up; the one on the left is wearing a ring and a bracelet, while the one on the right is empty. On the far left and right edges, there are vertical magenta bars, each partially obscured by a hand. The overall composition suggests themes of unity, diversity, and human connection.

HUMAN



RIGHTS

4. GENERAL ASSESSMENT AND RECOMMENDATIONS

- 4.1. General Assessment
- 4.2. Recommendations

04

BÖLÜM

4. GENERAL ASSESSMENT AND RECOMMENDATIONS

4.1. General Assessment

The human rights regime has a contractual upper framework. Numerous conventions and additional protocols, case law of human rights proceedings and national-constitutional norms constitute the modern human rights acquis as a whole. The Universal Declaration of Human Rights states that “everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The focal point of the normative framework of the main contractual texts of the international human rights acquis, starting from the right to life, is “human dignity”. The human rights regime is based on the idea that ‘all human beings are free and equal in dignity and rights’.

The pandemic, which has devastating effects on human rights on a global scale, has revealed the importance of protecting human rights. In this extraordinary period that threatens public health, countries have envisaged some restrictions in terms of the human rights regime. Such restrictions have created deep breaks in many fundamental human rights, such as the right to life, the right to health, the right to travel, the right to protect personal data, the right to work in safe and healthy conditions, and the right to social security. These vulnerabilities revealed by the pandemic further aggravate the balance sheet of human rights violations, especially for disadvantaged groups.

In this context, the human rights balance sheet in 2020 has come to the agenda with a focus on the right to life and the right to health due to the epidemic on both national and international scales. In this report, the impact of the crisis created by the pandemic on human rights has been evaluated and solutions have been developed for problem areas. Recommendations regarding the problem areas regarding human rights at the national level are given below.

4.2. Recommendations

- ▲ From building security to strengthening the actual infrastructure in order to prevent violations of the right to life caused by earthquakes; To ensure a strong cooperation between the central government and local governments, to carry out effective investigations against those responsible for the construction of illegal structures and to carry out comprehensive studies, up to the imposition of deterrent penalties,
- ▲ Dissemination of awareness raising activities to prevent violence against healthcare workers; increasing security measures and imposing more deterrent penalties,
- ▲ Increasing awareness raising activities in order to prevent violence against women; imposing deterrent penalties for acts of violence,

- ▲ Establishing a reasonable balance between public order and public safety issues and fundamental rights and freedoms regarding the implementation of the restriction codes for foreigners, since the extremely vague and abstract nature of these codes gives the administration a wide margin of appreciation,
- ▲ Implementing more effective methods to ensure that foreigners, especially those deprived of their liberty, have access to justice services and benefit from legal aid,
- ▲ Avoiding hesitations about complying with the decisions of the Constitutional Court and taking necessary action,
- ▲ Avoiding hesitations about complying with the decisions of the ECtHR and doing the necessary,
- ▲ Articles that remain at the level of criticism made in extraordinary situations are evaluated within the scope of freedom of expression and not subject to judicial proceedings,
- ▲ To prevent those who want to exercise their freedom of expression and assembly only when the situation necessitates, and to provide the necessary guarantees for the use of these rights,
- ▲ Putting forward concrete reasons rather than abstract reasons in interventions to the freedom of artistic expression,
- ▲ Applying the action and activity ban measure, which is decided on a provincial basis, only when necessary and in moderation,
- ▲ Implementation of mechanisms that will encourage youth employment more effectively,
- ▲ Carrying out awareness-raising activities in the field of legal literacy for young people,
- ▲ Strengthening measures against child labor, implementing administrative and judicial criminal practices more effectively,
- ▲ Taking necessary precautions as the practice of “termination due to situations that do not comply with morality and goodwill”, which is ruled as an exception to the ban on dismissal applied during the pandemic period, may lead to practices that do not comply with good intentions in practice and cause/will lead to the development of prejudices against the worker in terms of employment in the future,
- ▲ Enacting the “Pandemic Law”, which will include the procedures and principles regarding the measures to be taken during pandemic periods,
- ▲ Implementing more effective measures to ensure women’s participation in the workforce, implementing different work practices for women in public and private sector workplaces,

- ▲ Establishment of a “Law on the Rights of the Elderly” that addresses the rights of the elderly as a whole and sets forth the rights, authorities and responsibilities in this regard,
- ▲ Carrying out awareness-raising activities on discrimination against the elderly,
- ▲ Taking measures regarding the language and discourse used for the elderly in the written and visual media, and gaining the necessary competence at this point to the media workers,
- ▲ Carrying out studies on “digital rights and digital hate speech” in order to determine the areas of rights and responsibilities that arise with digitalization,
- ▲ Increasing accessible living spaces for people with disabilities,
- ▲ Establishing a “Mental Health Law” that will consolidate the rights in the field of mental health, strengthen the protection in this regard, and lay down the procedures and principles regarding it,
- ▲ Taking necessary measures against discriminatory and racist language and discourses against asylum seekers and carrying out awareness-raising activities at this point,
- ▲ Carrying out awareness raising activities on gender discrimination;
- ▲ Fighting mobbing more effectively, both in a preventive and suppressive nature,
- ▲ In accordance with the express provision in the Provisional Article 1 of the Law No. 6701, the new regulation regarding the provincial and district human rights boards should be implemented immediately,
- ▲ Enforcement of the second legislation regarding the provision in Article 43 of the Civil Servants Law No. 657, which provides “parents with the opportunity to work part-time until their children reach the compulsory primary education age”,
- ▲ Carrying out necessary studies to raise social awareness that there is a horizontal relationship and responsibility as well as a vertical relationship (state-individual relationship) in the field of human rights.

It is respectfully submitted to the Presidency of the Republic of Türkiye and the Grand National Assembly of Türkiye.

HUMAN RIGHTS AND EQUALITY BOARD OF TÜRKİYE



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