



# Universal Periodic Review Second Cycle- Turkey

## Submission of Human Rights Association - 14 June 2014

Human Rights Association is one of the important reference institutions in Turkey concerning human rights violations established in 1986.

Human Rights Association prepared this report on the basis of its observations, fact finding missions and individual applications made to its branches in 30 provinces of Turkey. The report mainly covers two issues and recommendations: protection of rights for a sustainable and wealthy peace process and rights of prisoners.

### Obstacles of Peace Process

1. Human Rights Association welcomes the efforts of Government of Turkey and PKK in opening up talks for peace to end the armed conflict lasted in the last three decades. HRA also welcomed the “Wise Men Commission” created by the government in 2013 to settle the Kurdish question in Turkey. However, HRA is very concerned about the lack of comprehensive approach enhanced with legal guarantee to carry Turkey for a real peace process and accompanying human rights protection measures.
2. Although seven Wiseman Commission provided their reports with recommendations in the beginning of September 2013, most of recommendations were left out in the latest Reform Package announced by the Prime Minister in December 2013. According to the report prepared by the Human Rights Association Monitoring Commission, the continuation of the peace process is under risk, the current government did not take the steps to overcome these risks.
3. One of the prerequisites of the durable negotiation and peace process is the change of Constitution. The existing Constitution which was created two years after the Military intervention in 1980, is the main source of human rights problems of Turkey and the deepening the Kurdish problem. The Constitution itself does not respect to the plural structure of Turkey and restricts the individual and collective rights of people living in



Turkey. After the 2011 parliament election, a committee was constituted in the Grand National Assembly of Turkey with the equal inclusion of all political parties. During the first round of the discussions, civil society actors presented their opinions on the solution of Kurdish question and democratisation of Turkey. But the amendments in the articles of the constitution which restrict rights and freedoms were rejected by the majority of the committee including the government. Therefore the process of creating a civilian constitution based on universal human rights norms was ended with no result in the beginning of 2013. Without changing this constitution which is anti-democratic, restrictive and blind to plural structure of the society, a sustainable peace cannot be guaranteed.

#### **Recommendations for a healthy peace process:**

1. A civilian constitution protecting fundamental rights and freedoms should continue.
2. All the obstacles against the freedom of expression and freedom of association should be lifted immediately. To reach this goal all legal regulations shall be reviewed with respect to these rights. In this context, Articles 85,132, 216, 218, 285, 286, 288, 289, 305, 217, 301, 220/6-7-8, 222, 226, 314/3 and 318 of Turkish Penal Code which restrict freedom of expression should be immediately amended on the basis of Article 19 of the ICCPR and Article 10 of the European Convention of Human Rights and Caselaws of European Court of Human Rights. Provisions in the Law on Misdemeanour preventing freedom of expression should be amended.
3. Anti-Terror Law should completely be suspended.
4. Provisions in the Law on Criminal Procedures concerning protection of private life, wiretapping, technical surveillance and contradicting fundamental rights and freedoms should be amended. The practice of secret witnesses in court cases should be stopped. Arrests for catalog crimes should be reason for arrest.
5. Restrictions on the freedom of expression in the Law on Internet should be suspended.
6. Law on Crimes Committed against Atatürk is against the freedom of expression and should be completely suspended.
7. In accordance with the right to associate Law on Political Parties should be amended, obstacles against organisational democracy within political parties should be suspended, elections within the political parties should be subjected to judicial review.
8. The authority of Supreme Court of Appeals Prosecutor's Office on political parties should be suspended. Political parties should be able to benefit from grant-in-aid in proportion with the vote rates in general elections. Fee for the independent candidates in the elections should be suspended. Legal regulations and amendments to allow human rights institutions and civil society organisations to monitor the election should be made.



9. The word Türk (Turkish) in the names of professional chambers, laws, associations for public welfare should be changed into Türkiye (Turkey).
10. Law on Population Registration and Surname Law should be amended to allow people to choose the names and surname they want to have.
11. Former dwellers of evacuated villages and other residential areas should be substantially compensated. Necessary social and economic measures should be taken for the returns to the villages.
12. Temporary and voluntary village guards should be discharged; for the sake of social peace village guards should be disarmed immediately.
13. Necessary legal regulation and amendments should be made for the clearance of land mines; Turkey should become a party to the Ottawa Treaty.
14. Effective investigation and prosecution procedures should be implemented for the enforced disappearances. Lapse of time should not be implemented for such crimes. Mass graves should be opened with respect to the international treaties and in collaboration with civil society organisations. Turkey should become a party to International Convention for the Protection of All Persons from Enforced Disappearance.
15. Effective investigation and prosecution procedures should be implemented for killings by the unidentified assailants, mass murders and extra-judicial killings. Lapse of time should not be implemented for such crimes.
16. Turkey should become a party to Rome Statute of International Criminal Court and ratify the additional protocols of Geneva Conventions.
17. Amendments in the Law on National Education and changes in curricula should be made in accordance with pluralism principle.
18. The letters w, x and q should be added to the alphabet by making necessary changes in the Law on Acceptance and Application Of Turkish Alphabet.
19. Hate speech should be prohibited; a law on hate crimes should enact.
20. Anti-discrimination and Equality Committee should be constituted, Alewi Djemevis should be acknowledged as sanctuaries, compulsory religion courses should be repealed.
21. Individual armament should be prohibited; legal regulations should be prepared for the confiscation of currently possessed fire arms.
22. By making necessary amendments in Law on Duties and Powers of the Police use of fire arms by the police should be restricted.

### **Human Rights Violations in Prisons**

23. The protection of human rights in prison are under risk. As there is no independent monitoring mechanisms in line with the OPCAT, Human Rights Association receives complaints about arbitrary violation of many rights and freedoms. Prohibition or



- restriction of books, newspapers and magazines and prevention of defending in mother tongue at courts of honor, are only the two of these violations.
24. There were 843 prisoners, who applied to our association in 2013, complaining of torture and ill-treatment. They communicate with us either by writing or by the help of their families. The complaints on patdown in the nude, “welcome beatings”, counting disposition, attention position, beating the prisoners who object counting afoot are still ongoing and licking at cells, shouting and cursing continue. Besides, the prisoners state that the patdowns in the nude are imposed, the wards are changed under compulsion after sudden attacks, their demands for routine ward change are rejected and all the materials in the wards are kept by the prison management. It was also complained that something like petitions, letters, books that are to be sent out are given back, they are sometimes kept by the management and there is very late delivery of the goods of the excile prisoners.
  25. İll-treatment is also ongoing for the prisoners’ relatives and lawyers.
  26. There is also degrading treatment against the visitors; they are insulted and treathened to be arrested. The information taken during the visit registrations are transferred to the Prevention of Terrorism Department of the Security Directorate. They face with body searches both by the guardians and the soldiers, their underwears are checked and sometimes they are undressed. The metal detectors at “sensitive doors” are calibrated to sense even the smallest materials such as hair pins and the lawyers are forced even to take out the bras and enter these doors so many times. The shoes are taken before entering the doors, these shoes are put in the x-rays separately and the people could get in wearing the slippers. The ones who manage to pass the sensitive doors face with body search by hands. Lawyers, who pass all x-ray searches are still exposed to degrading, humiliating treatments and body searches which could easily be taken as harressment. The shoes are taken off and checked again during the body search.
  27. Recently, the children living in Adana Ceyhan, Pozantı, Şakran, Kürkçüler, Antalya ve finally in Sincan Penalty Execution Institutions have been exposed to torture, ill-treatment, sexual harassment and other degrading treatments. The the Republic of Turkey violates the international agreements by the degrading treatment to the children in prisons, which are also exposed to public.
  28. Examining the reports on violation of rights in prisons in recent years, it is seen that “compulsory transfers”, in real terms “Exile”, is one of the strongest violation matters. The closest distance from the existing prison region, which the prisoners’ families also live in, to the dispatched prison is 1648 km. Therefore, it can be considered that there would be serious problems in economic terms and in family relations. The number of prisoners applied to our association in this matter reached to 1522.



29. Another important issue in exiles is the transfer of sick prisoners. Even the prisoners who are seriously ill are transferred. In art. 58/2 of the Execution Law, it is stated that the prisoners should not be degraded or humiliated during their transfers. However, there are many complaints about the arbitrary applications ignoring this statement. Prisoners are faced with insult, threats and harassment.
30. We previously mentioned that the prisoners, whose law suits are pending, were also among the ones at transfer. This causes problems in accessing the lawyers. The statements in articles 8 and 22 of UN Basic Principles on the duties of Lawyers are violated.
31. Children are closed into prisons in every part of Turkey, thousands of kilometres away from their families because of the scarcity of prisons and discipline penalties. Besides, they are not able to communicate with their families or people from outside for many months.
32. The interruption in prisoners' relations with the outside world, increases the risks of torture and ill-treatment. The right to consult a lawyer is an assurance to prevent such risks and behave in line with the legislative proceedings.
33. The most important observation of HRA while following the health problems in prisons, is that the long-term imprisonment leads serious damages on human body. This can be seen in our 8 years' list of applications of the prisoners who have "vital diseases" since they have no routine medical treatment.
34. Examining all these issues, we have the understanding that, the prisoners could hardly have access to the doctors and have limited possibility to get adequate and regular medical treatment, diagnosis and medical control facilities. There are no full time (permanent) doctors in the prisons, in which there are hundreds or even thousands of prisoners living. The doctors working are not specialists. Since, "family physician" application is also covering the prisons, the medical doctors work for half an hour in 2 or 3 times a week, in prisons. In such a limited time, it is not possible to diagnose an illness and have necessary medical treatment. The prisoners who have serious illnesses and have no possibility to get well in the prison infirmary, are not timely transferred to the related hospitals and have to wait for a long time. Even, for the ones who get the "transfer order" they cannot reach the hospitals because of the lack of vehicles or personnel.
35. The time when the prisoner arrives in the hospital, the gendarme insists on staying with the patient prisoner depending on the tripartite protocol of Ministries of Interior, Justice and Health. The gendarme also forces the doctors to examine the patient handcuffed. Examination of the handcuffed patient under the observation of the gendarme, which is totally against the ethics of Medical Science, leads incomplete



diagnosis and medical treatment. Sometimes, the prisoners are sent back to prisons after a cursory examination. Since, there are not any paramedics or an ambulance available all day and night, during emergency cases such as heart attacks, prevents timely intervention and leads deaths of the patient prisoners.

36. Due to the strict approach of the Forensic Medicine Institute and the criterium on the “treat against public security” added to Art. 16 of the Law No. 1575, it becomes almost impossible for the prisoners who have cancer, stroke and other serious illnesses that need permanent medical treatment, to get discharged or benefit from the “controlled discharge”.
37. The prisoners with serious illnesses come to İstanbul from different prisons, all over Turkey, just to get Forensic Medicine Report from the FM Institute of State and have to wait for months to receive it. During their visits to the FM Institute lasting for many months, these patients are kept in vehicles, with their hands cuffed, with no food nor water for hours. Besides, they lose their chances of chemotherapy or dialysis treatments they have in the previous prisons. It is observed that most of patient prisoners are sent back to the previous prisons by their own will.
38. The patient prisoners, who get worse, are temporarily put in the prisoners’ wards in the hospitals. These narrow wards are usually located in basements without enough light and air. The prisoners are sometimes cuffed to the beds. 17 years old Abdullah Akçay, who had cancer, lost his life after being kept for 1 year in such conditions, in a 7-8 m2 basement ward. Therefore, it should be said that, the medical treatments of the patient prisoners, who are transferred from prisons to the hospitals, become real torture.

### **Recommendations**

1. Turkey should set up an independent a separate Prevention Mechanism as proposed by the OPCAT and equipped with all necessary human and financial sources.
2. The legislation enables the imprisonment of children who are under trial should be abolished. Children, regardless of what crime they have committed, should not be isolated from, but brought back to the society. The restriction of freedom should be the absolute last choice. For every time a child’s right is abused, permanent scars will be left not only in the life of the child, but also in society.
3. Existing legislation should be amended in order to cover all prisoners whose health status is under serious risk without any criteria like “treat against public security” (Article 16 of the Law No. 1575). Reports of certified hospitals for prisoners should also be accepted beside the Forensic Medicine Institute.