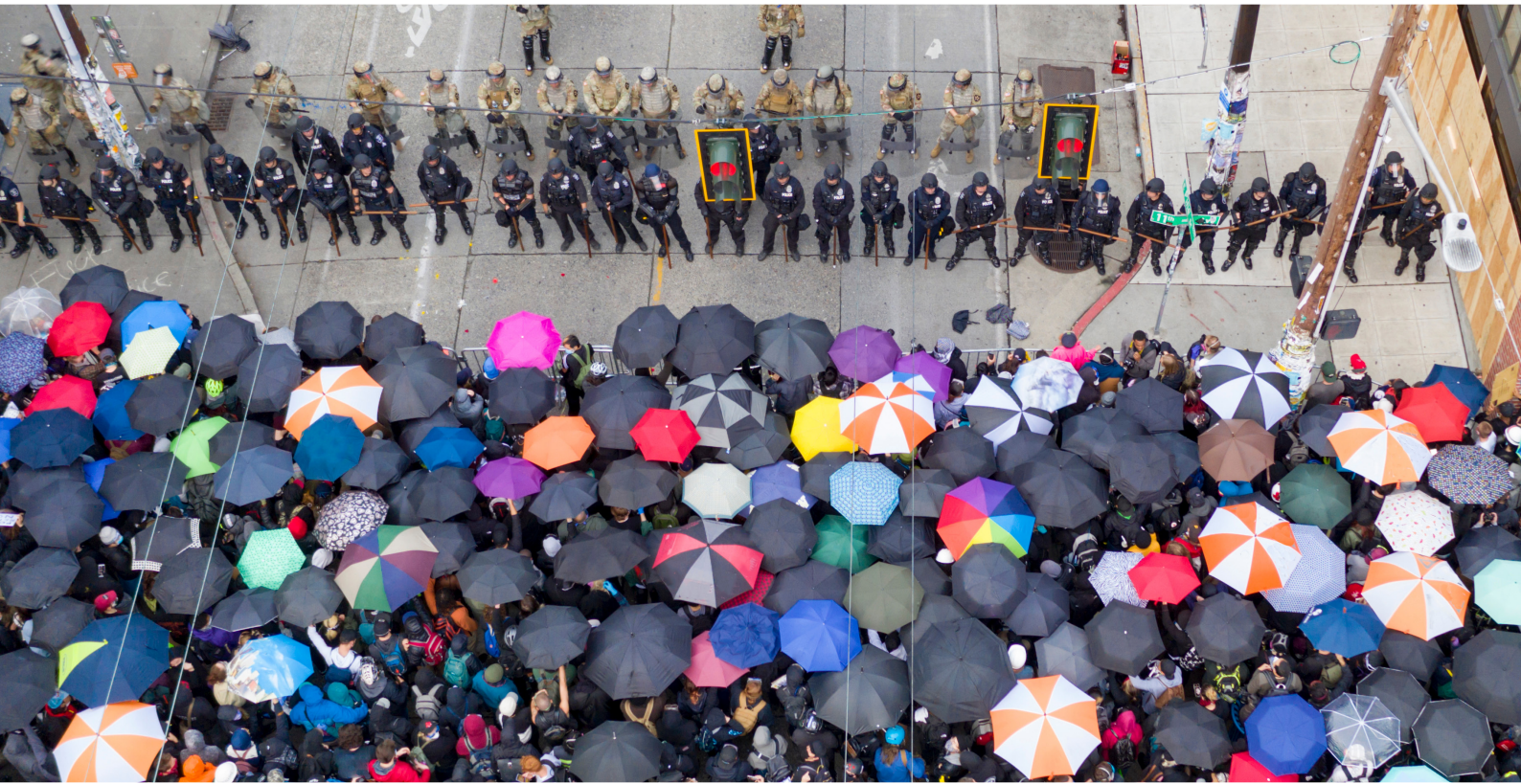




LIBERAL PERSPECTIVE REPORT

SAYI: 22 • DECEMBER 2021



THE STATE OF PARTICIPATORY DEMOCRACY IN TURKEY RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION

Editor: İsrail Özkan



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Editor: İsrail Özkan

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*Any views expressed in this study do not reflect
the institutional view of the Freedom Research
Association, the International Democratic Initiative
(IDI).*

*This study has been prepared with the
contributions of the International Democratic
Initiative (IDI).*

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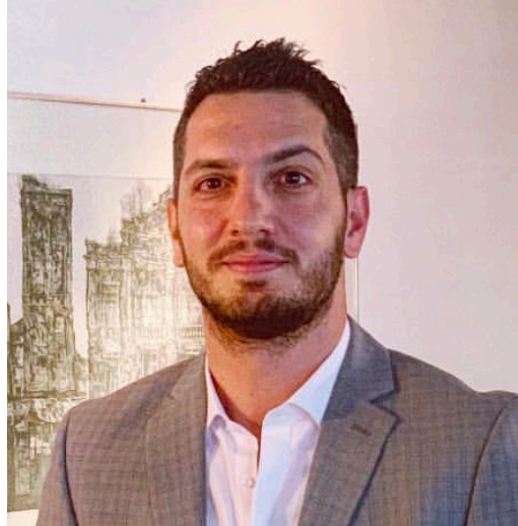
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“ The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society.”

Alexis de Tocqueville

FOREWORD

Freedom of Association according to article 11 of the European Convention on Human Rights (ECHR), is defined as the freedom of individuals to form various organizations in cooperation with others, freedom to participate in the existing organizations or to leave these organizations to protect their individual interests. In order to make sense of this definition, the concept of the organization must be defined alongside. Organizations are independent, non-profit seeking institutions that are formed on a voluntary basis for a common interest, activity or purpose. Differences in the objectives that are pursued had led to different organization types. Those formed for political purposes are political parties and those with social and civic purposes are named as foundations and charity; lastly, the ones set up for economic purposes are called union.

Freedom of Assembly as accepted definition by the Council of Europe ensures individuals' ability to organize collective actions in both private and public spheres such as meetings, marches, parades, protests and sit-ins with the aim of expressing themselves. In the constitution, this right has indicated in article 34 with the title "Right to Hold Meetings and Demonstration Marches". Hereof, "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others..."

Freedom of association and assembly is a freedom that embraces every aspect of life from political, social, religious to ethnic, class, culture, and so on. A freedom that embraces different aspects is naturally is highly related to other freedoms. Apart from it being fundamental rights and freedoms, the relation of freedom of association with other fundamental rights and freedoms makes it particularly important. In absence of freedom of assembly, freedom of association will not make sense just like how freedom of expression will suffer significantly without these two freedoms.

Because freedoms of association and assembly, in terms of their definitions and main purposes, are the tools of individuals' efforts to express themselves better and to create public opinion when in necessary circumstances. Freedom of belief, which can be considered as an exclusive

version of freedom of expression that is provided in regards to social and political issues, is also closely related to freedom of assembly and association. If we take it one step further, the union rights of the workers, whose formation of a common front is vital for their existence, are also within the same network of relations with freedoms. Thus, any restriction that will be imposed on the freedom of association and assembly carries the risk of harming the freedoms of expression, belief and other freedoms as those are related.

Therefore, to be able to discuss a democratic society and realistic political participation mechanisms and in order to build a democratic, pluralistic, human rights-based political system, it is essential that freedom of association, assembly as well as freedom of expression and belief is guaranteed as they are related one another. In the Western world that Turkey is included, there is a consensus on the definition of these two freedoms as there are, on many other issues. These freedoms have taken the focus they deserve in both national and international legal texts by either being evaluated individually in regards to the values they hold or by the linkages they have with other freedoms.

However, ensuring these rights in national and international legal texts is unfortunately not enough. In Turkey, disproportionate police violence and human rights violations, that have become chronic, as well as increasing political pressures towards non-governmental organizations and demonstration marches has been growing exponentially in recent years. While Turkey keeps ranking lower even in the category of non-free states in international indexes, the score on rule of law and democracy also decreasing. At this stage, the violations of the right to association and assembly and the freedom of expression make discussions about pluralist and participatory democracy and the rule of law in Turkey impossible.

We, as the Freedom Research Association, have prepared this report in the scope of our project 'Freedom of Assembly and Association and the State of Participatory Democracy in Turkey' to draw attention to the issues mentioned above, to develop solution proposals, to raise public awareness and knowledge in regards to relevant constitutional rights and advocate in the international community with the report we will be preparing. In the studies and projects, we conduct to achieve our vision of a free and prosperous Turkey, emphasizing that these rights and freedoms are the uncompromisable components of democracy and rule of law, and I hope

that this report will be beneficial to the organizations that are working in the field of human rights and be a guide to the decision-makers.

With liberty,
İsrafil Özkan
General Secretar
Freedom Research Association

1. FREEDOM OF EXPRESSION, ASSEMBLY AND MARCH IN THE CONTEXT OF RIGHT TO ASSOCIATION

The underlying recognition here is that there are power differentials in any society, even one that espouses liberal equality, and that sometimes associations are needed to correct injustices where the stronger take advantage of the less powerful.

Terry Sheppard

As much as freedom of expression and freedom of association are individual rights, they are also in fact collective rights. Freedom to association aims to meet the fundamental humanitarian need to assemble to achieve political, religious, ideological, economic, social, cultural, professional or sporting purpose.

1.1. Assembling (Örgütlenme) as an “Organization (Organizasyon)”

The terms in Turkish “Örgüt”, “Kuruluş” and “Organizasyon” are the equivalent of the term “Organisation” in English. However, due to political events in Turkish history, the word “Örgüt” is perceived as negative or illegal whereas the words “organizasyon” or “kuruluş” sounds positive and evoke a legal act in minds. This negative perception regarding the word örgüt, and örgütlenme (to organize) is intentionally constructed by the government in power. The current government is aware of how powerful and effective freedom of association is. Due to this very fact, they attempt to restrict the right to hold meetings and demonstrate marches under the freedom to association which is a part of fundamental rights and freedoms in illegal ways.

The concepts of “örgüt” and “örgütlenme” therefore, the concept of association is so criminalized by the government in Turkey that people when they hear these words it recalls “the groups that are trying to change the political power” rather than a natural right. Today, the word “örgüt” in any mainstream news’ headline, can lead to thoughts as if there is an illegal situation.

1.2. Organization is peculiar to the Nature

Getting organized is humankind’s natural tendency; it is peculiar to nature. Viewing nature and history, the fact that many revolutionary inventions, events, urban life and cultural activities have erupted, grew and generated from the concept of association. Many living beings had survived by organizing. Thus, portraying the concept as inhumanly is an obstacle to the rights that would be asked by getting organized.

1.3. A holistic view of Fundamental Rights and Freedoms

Even though the right to the association has a meaning by itself, when the freedom of speech is ignored, it is inevitable that the right to association loses most of its meaning. As the right to speech and right to the association are two concepts that are ontologically correlated¹. As an organization, one can only express oneself and/or create a public opinion only by using the freedom of speech and right to hold meetings and to demonstrate marches². Hence, fundamental rights should be evaluated not one by one but from a holistic view³.

1.4. Freedom of Association in the Legal Texts

Right to association is protected by the constitution and several international agreements. In regards to international agreements, right to association stated; in the Universal Declaration of Human Rights article: 20/1-2,

1 Duran, Hasan, Freedom of Expression and Turkey, Selcuk Law Review, 14 (1), 2006, p. 57- 81, s.60

2 Özeç, Berke, Toplantı ve Gösteri Yürüyüşü Özgürlüğü ve Mekân Yasakları, İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (İÜHF), 2015, Cilt:74, Sayı: 2, p. 88

3 “Freedom of expression is also one of the indispensable building blocks of a democratic society and political system since it is an important right in the exercise of related rights such as freedom of religion and conscience, the right to assemble and demonstrate, and freedom of association.” .” Tümay, Murat, Kişilik Hakları ve Basın Hürriyeti Çatışmasında İfade Hürriyeti Dengesi, Anayasa Yargısı, 2016, Cilt: 31, Sayı:1, p.355-378, p.355

What will really make a difference in the protection of fundamental rights here is the actual implementation of the law and the perspectives of judges and prosecutors on democracy and the rule of law.

23/4; and International Convention on Civil and Political Rights article: 22, the International Convention on Economic, Social and Cultural Rights article: 8, American Declaration of the Rights and Duties of Man article: 22, the European Convention on Human Rights article: 11, the American Convention on Human Rights article: 16, African Charter on Human and Peoples' Rights article 10. Accordingly, "Everyone has the right to freedom of association, assembling with others...'

In Turkey, there is no inefficacy in regards to the law, that would cause the current issues in freedom of expression and right to association as its tool⁴. In regards to judiciary or execution in Turkey, there is no obstacle for these rights to be used. There is no problem with freedom of association or freedom of expression in the Constitution or the ECHR. However, this does not mean that there is no need for new norms regarding these in Turkey. Surely, the law on holding meetings and demonstration of marches could be improved, but the emphasis here is on the fact that whenever a governor wants to not approve a demonstration there is no legislation that restricts him.⁵

In Turkey, there is no effective complaint mechanism that can be applied both against the unlawful actions of judges and prosecutors or in violation of the right to association or freedom of expression. There is a strong legislative regulation in Turkey that can protect and improve freedom of association and expression if implemented in actual terms. For instance, the 1982 Constitution was written under the coup, yet it provided many protection mechanisms for fundamental rights and freedoms.⁶ However, in the current state, the strong legislation alone is not enough as the issue of impartiality and independence of the judiciary in Turkey keeps deep-

⁴ In contrary to the statement in the constitution, "everyone has the right to assemble...without prior permission", Article 3 of Law No. 2911 requires foreigners to obtain permission from the Ministry of Interior to hold meetings and demonstration marches. The law also stipulates an obligation to notify the civil authority 48 hours in advance for any activity to be carried out during the meeting. It is impossible to argue that these restrictions in the law comply with the constitution and international conventions.

⁵ Özdemir, Ali, Kamu Düzeni' ve 'Kamu Güvenliği' kavramlarına Analitik Bir Yaklaşım (Toplantı ve Gösteri Yürüyüşü Hakkının Sınırlandırılması Örneği), International Journal of Legal Progress, 2016, Cilt: 2, Sayı: 2, p. 78-115, p.88

⁶ Further reading suggestion: Development and Protection of Fundamental Rights and Freedoms, <http://politikaakademisi.org/2014/08/08/temel-hak-ve-hurriyetlerin-gelismisi-ve-korunmasi/>

ening. What will really make a difference in the protection of fundamental rights here is the actual implementation of the law and the perspectives of judges and prosecutors on democracy and the rule of law. In Turkey, there is no effective complaint mechanism where one can report an unlawful act of judges and prosecutors, or in violation of the right to association or freedom of expression.

1.5. State's Own Judges and Prosecutors Are Not Complying with Their Own Constitution

The most significant case in freedom of expression and right to association is the case of Osman Kavala. The subject Osman Kavala is being judged is related to the usage of the rights of freedom of expression and the right to association. The decision of ECHR, which is binding to all state's parties to the convention⁷, was that the use of freedom of expression, the right to assembly and demonstration, and the freedom of association was lawful and that Turkey was committing a violation according to Article 46 of the European Convention on Human Rights. Yet, Kavala's long-standing detention has been continuing. This case reveals Turkey's perception of the law and the Constitution. Judges who do not release Kavala in line with the decision of the ECHR are committing a crime. Judges and public officials who do not comply with the Constitution are now one of Turkey's biggest problems. It is inevitable that in the future those judges and public officials who do not comply with the constitution to be subjected to charges and judged for the harm to the rule of law, democracy and human rights as well as grievances they caused.

It is inevitable that in the future those judges and public officials who do not comply with the constitution to be subjected to charges and judged for the harm to the rule of law, democracy and human rights as well as grievances they caused.

1.6. Demolishing the Essence of Right

Meeting and demonstration marches are regulated under article 34 of the Constitution as follows: "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of a crime, protection of public health and public morals or the rights and freedoms of others. The formalities, conditions, and procedures

⁷ Nişancı, Dilaver, AİHM Kararları Işığında Özgürlük ve Güvenlik Hakkı (AİHS M. 5) Ve Bu Hakkın İfade Özgürlüğü (AİHS M. 10) İle Amaçta Saptırma Yasağı (AİHS M. 18) Açısından İrdelenmesi, Dicle Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 26, Sayı:44: p.37-74, p.69

It is obvious that defining this situation as only a violation of rights is not sufficient, instead, it would be better to state that political structure has been redesigned to restrict these fundamental rights and freedoms

to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law". However, it is no longer possible to hold meetings and demonstration marches without any permission in Turkey. Demonstration marches as a way of exercising freedom of association are dispersed by organized administrative obstructions and police interventions with catalogue reasons, making the exercise of this right is no longer possible. As observed, since 2016, the right to assembly and demonstration marches in Turkey is only included in legal texts, just like freedom of expression, and it is no longer possible to actually use these freedoms. It is obvious that defining this situation as only a violation of rights is not sufficient, instead, it would be better to state that political structure has been redesigned to restrict these fundamental rights and freedoms.

In Turkey, non-governmental organizations, unions, and some political parties cannot exercise their right of assembly and demonstration in any way. LGBTI+ community and all kinds of meetings and demonstration marches organized by them can be included in these. With such practices, the core of these rights is demolished.⁸ Moreover, many people are now in prison just because of exercising their right to freedom of expression or the right to assembly and demonstration. Additionally, the lawsuits of thousands of people who are prosecuted for membership of a terrorist organization for the participation in the activities of a legal political party remains open. The Demirtaş case is a good example of this. The expression of the ideology of a legal political party is perceived as a criminal act by the State. Considering all those developments, it would not be an erroneous argument to make that there is no longer any way of practicing freedom of association, assembly and freedom of expression in Turkey.

1.7. Criticisms Against the Law No. 2911 on Meetings and Demonstrations

Many human rights activists have objections to the Law on Meetings and Demonstrations. As stated in the Constitution in Turkey, everyone has the right to demonstrate peacefully, however there are numerous limitations and exceptions concerning the usage of these rights such as national security, public morality, and public health.⁹ These limitations and exceptions

⁸ Özenç, Berke, Toplantı ve Gösteri Yürüyüşü Özgürlüğü ve Mekân Yasakları. Journal Of Istanbul University Law Faculty, 2015, Cilt:73, Sayı:2, p.87-133, p.131

⁹ "The right to peaceful assembly and demonstration is one of the fundamental rights in a democratic society. Just like freedom of expression, [this right] cons-

directly mean that many groups will be deprived of practicing their right to hold meetings and demonstrate marches. For example, the meetings and demonstrations that LGBTI+ wants to hold are constantly blocked due to concerns regarding “general morals”; meetings and demonstration marches that the Kurds want to hold are constantly obstructed for reasons that lack context, such as “national security”, and the demands of these groups are rejected by justifying these exceptions exist in the law.

The law gave the public authorities fairly wide discretion in such cases. For instance, the Pride March of LGBTI+ is considered as a violation of “general morality”. The concept of General morality is a concept that has not been completely drawn and has not been adequately defined.¹⁰ With such vague statements, the legislators’ limitation of a right is contrary to the European Convention on Human Rights (ECHR); and applications on the restrictions imposed on these grounds frequently result in violation decisions by the ECHR.

Another criticism of the law is the disproportionate usage of force by the police against those who exercise their right to assembly and demonstration marches in Turkey. Law enforcement officers in Turkey use their power disproportionately, extensively and destructively. This issue has now become systematic. As observed in Boğaziçi University protests and other demonstrations, contrary to the necessity of a democratic society, law enforcement interference is carried out disproportionately and extensively.¹¹ Regarding this issue, there are numerous violation decisions by the ECHR. As an example, in the Arpat/ Turkey case, it was concluded that the police had disproportionately interfered with the demonstration, thus violating Article 11 of the ECHR, which regulates the freedom of assembly and association.

Law enforcement officers in Turkey use their power disproportionately, extensively and destructively. This issue has now become systematic.

titutes one of the foundations of a democratic society. For this reason, this right should not be subject to narrow interpretation.” Tanyar, Ziya Çağa, Avrupa İnsan Hakları Mahkemesi İçtihadında Toplantı Ve Gösteri Yürüyüşü Hakkı. Ankara Üniversitesi Hukuk Fakültesi Dergisi, 2011, Cilt: 60, Sayı:3, p. 593-634, p.599

¹⁰ “Just as there are no moral rules that apply to everyone, there are no moral rules that are universally valid”. Aktan, Coşkun Can, Ahlak ve ahlak felsefesine giriş, Hukuk ve İktisat Araştırmaları Dergisi, 2009, Cilt:1, Sayı:1. p..40

¹¹ For the ECHR’s views on the disproportionate use of force by the security forces: ZABUNOĞLU, H. Gökçe, AİHM Kararlarında Toplantı ve Gösteri Yürüyüşü Hakkı ve Kolluğun Zor Kullanma Yetkisi, Ankara Üniversitesi Hukuk Fakültesi Dergisi, 2017, Cilt:66, Sayı:3, p. 627-658, p.644

The biggest reason for frequent human rights violations in Turkey is the judges and public officials who do not comply with the Constitution.

The latest criticism is directed at the discriminatory practice of public authorities and security forces towards those who exercise their right to assembly and demonstration. Whereas it is guaranteed in national and international legal texts that different groups must benefit from this right in the same way, opposition groups in Turkey are prevented from benefiting from these rights.

Due to the given reasons above, we are critical of Law No. 291. However, when we look at the other legal regulations on the freedom of association and assembly, it would not be accurate to state that the legislation is insufficient to regulate these rights. The biggest reason for frequent human rights violations in Turkey is the judges and public officials who do not comply with the Constitution. Thousands of civil servants, especially judges and law enforcement officers, disobey the Constitution, leading to the violation of these rights. Herein, the critical question on how these issues in practices can be resolved is facing the human rights activists and defenders. For example, before July 15, there were different capitals in the mainstream media in Turkey. However, after July 15, 97% of media companies were seized by the capital groups close to the government according to the current data of the Journalists Association of Turkey. Consequently, more people prefer to use internet as a source. However, now there are attacks towards social media using the disinformation and fake news as a justification. In fact, the government is making a policy to completely destroy the channels where freedom of expression and freedom of association can be used. Social media is now what was Taksim Square in old times. It has turned into a medium where fundamental rights that cannot be exercised at school, workplace or parliament can be exercised.¹² However, with the draft law aiming to bring regulations regarding social media, this medium has also been threatened. The fact that the current judges will decide what is false information or what is disinformation further magnifies the dimensions of the threat.

In recent years, the right to assembly and demonstration has evolved into a right which groups outside the official discourse cannot use. What is legal and what is lawful differs. The Governor or district Governor may legally prevent the meeting and demonstration, but this does not mean that it will

¹² “Interactive communication, the ability of politicians to address a wider audience in a short time and their ability to measure their reaction more easily are the reasons that make social media a powerful political tool.” Çıldan, Cihan, Et Al. Sosyal Medyanın Politik Katılım ve Hareketlerdeki Rol., Akademik Bilişim, 2012, Cilt:3, p. 233-237, p.236

be lawful and as a matter of fact, it should not be. Likewise, nowadays citing the pandemic as a reason, there are obstructions on meetings and demonstrations given public health as a reason. Yet, whether this decision is legal or not is a different matter. Indeed, an increase in the number of meetings and demonstrations will unveil these unlawful decisions and acts.¹³

2. THE RIGHT TO ASSEMBLY AND ORGANIZING MARCHES IN THE CASE LAW

The right to organize meetings and demonstrations as a form of collective expression and public participation is not only defined as a fundamental right in the Constitution but also ensured by international conventions in which Turkey is a part.

As stated by the United Nations Human Rights Committee, the right to peaceful assembly, which is a fundamental human right, allows individuals to express themselves collectively and participate in the process of shaping the society to which they belong. The right to peaceful assembly is an important right in itself, as it preserves the ability of individuals to exercise their individual autonomy in solidarity with others. The right to peaceful assembly also is the fundamental component of a participatory governance system based on the principles of democracy, human rights, the rule of law and pluralism, and other related rights. When used to voice grievances, peaceful meetings may be turned into an opportunity for a peaceful, inclusive and participatory resolution of social differences.¹⁴ The right to peaceful assembly is also an essential tool for human rights advocacy.

Article 34 of the Constitution of Turkey, amended by Law No. 4709 of October 3, 2001, and currently in effect, is as follows:

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. 21 The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of

The right to organize meetings and demonstrations as a form of collective expression and public participation is not only defined as a fundamental right in the Constitution but also ensured by international conventions in which Turkey is a part.

¹³ Tanör, Bülent, Türkiye'nin İnsan Hakları Sorunu, Genişletilmiş Yenilenmiş 3. Baskı, İstanbul, BDS Yayınları, 1994, p.107.

¹⁴ Human Rights Committee (HRC), General Comment 37 on the Right to Peaceful Assembly (art. 21), para.1, <https://digitallibrary.un.org/record/3884725>

others. The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.”

Freedom of assembly is also ensured in Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Article 21 of ICCPR states as follows:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 11 of the European Convention on Human Rights guarantees the right of assembly along with the freedoms of association. Article 11 is stating:

*“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”*

As indicated, in these regulations’ the right is defined first, and later specified in which conditions this right can be interfered with. Freedom of assembly as it is not an absolute right may be restricted under certain conditions. Accordingly, any restriction must be lawful, pursue a legitimate purpose and needed in a democratic society. When an application is made within this framework, national and international protection mechanisms make a five-stage evaluation.

1. Whether right was given
2. Whether there is an interference with the right,
3. Whether the interference is legal
4. Whether the purpose is legitimate
5. Necessity and proportionality of the intervention in a democratic society

The discussion will be based on this systematic framework.

2.1. Scope of the Right

2.1.1. Peaceful Assembly

It should be primarily mentioned that the right ensured in human rights law is the right to peaceful assembly. This right does not include the use of violence, in any way. The constitution protects the “unarmed and not violent” gatherings. Demonstrations in which organizers and participants are violent, incite to violence or reject the foundations of a democratic society are excluded from protection.¹⁵

However, minor and seldom acts of violence during a peaceful demonstration do not annihilate the rights of other demonstrators who are non-violent.¹⁶ The ECHR when deciding on whether the use of force and violence during a demonstration impaired the peaceful nature of the meeting, considers; (i) whether the meeting was planned peacefully from the beginning, whether the organizers had any violent intentions from the start; (ii) whether the participator had any violent intentions while attending the meeting; and (iii) whether the participator caused psychical harm to anyone.¹⁷ In cases where demonstrations that started peacefully are blocked by unnecessary and excessive police interference, the ECHR takes into account the contribution of the said interference to the escalation of vio-

¹⁵ ECHR, *Navalnyy / Russia* [GC], 2018, § 98; *Ter-Petrosyan / Armenia*, 2019, § 53; *Fáber / Hungary*, 2012, § 37; *Gün and Others/ Turkey*, 2013, § 49; *Taranenko / Russia*, 2014, § 66; *AYM, Decision of Ali Rıza Özer and Others*, App. No: 2013/3924, 6/1/2015, § 118; *Ali Sarıpınar (2) Decision*, App. No: 2013/6186, 9/3/2016, § 73; *Gülşah Öztürk and Others Decision*, App. No: 2013/3936, 17/2/2016, § 68; *Osman Erbil Decision*, App. No: 2013/2394, 25/3/2015, § 48.

¹⁶ *Primov and Others / Russia*, 2014, § 155

¹⁷ *Shmorgunova and Others/ Ukraine*, 2021, § 491

The subject of the right to peaceful assembly is everyone. Therefore, both real persons and legal persons hold this right.

lence and decides that such demonstrations will be protected under Article 11 of the ECHR. Concluding the decision, the Court considers if the participators have not initiated a violent act even though there were violent clashes between the demonstrators and the security forces.¹⁸ In other words, in the cases where police interference led to violent incidents, the rights of the demonstrators who weren't violent and haven't taken part in the clashes cannot be interfered with¹⁹. Nevertheless, this does not mean that those who participate in the clashes and resort to violence or provoke violence cannot be interfered with and punished.²⁰ When such demonstrators apply to ECHR, they are not considered under the scope of the "right to peaceful assembly" by the ECHR. The case is concluded in inadmissibility due to lack of jurisdiction in terms of the subject.

Notably, the illegality of a meeting alone does not diminish its peaceful character. Law No. 2911 subjects the right to assemble to strict formalities and failure to comply with these procedures may render the meeting illegal. However, such meetings should not be interfered with as long as they don't subvert public order.²¹ Furthermore, since any demonstration in the public sphere can impact the flow of daily life, the existence of such fact alone is not a reason for interference according to the ECHR.²²

2.1.2. Subject of the Right

The subject of the right to peaceful assembly is everyone. Therefore, both real persons and legal persons hold this right. As a matter of fact, according to the ECHR unincorporated communities can also benefit from this right.²³ However, in Law No. 2911 on Holding Meetings and Demonstration Marches, a condition of being a major for organizing an open-air meeting is indicated. This condition is contrary to the Convention on the Rights of

¹⁸ *Lutsenko and Verbytskyi/Ukraine*, 2021, §§ 112-114

¹⁹ *Annenkov and others / Russia*, 2017, §§ 122-129

²⁰ *Razvozhayev / Russia ve Ukraine and Udaltsov / Russia*, 2019, § 284

²¹ *Oya Ataman/Turkey*, Appl. No: 74552/01, 05.12.2006, § 39.

²² *DİSK and KESK/Turkey*, Appl. No: 38676/08, 27.11.2012, § 29. AYM, *Osman Erbil Kararı*, B. No: 2013/2394, 25/3/2015, § 49.

²³ *Hyde Park and others / Moldova* (no. 3), 2009, § 5-16. In this application, the ECHR decided that the applicant, who was a legal personality during the demonstrations, took a decision of termination as a result of pressure, which did not prevent them from pursuing the case.

the Children as well as the Constitution.²⁴

According to the rule, foreigners also can enjoy the right of peaceful assembly.²⁵ Whereas there is no restriction in the Constitution on the usage of this right by foreigners, Law No. 2911 on Meetings and Demonstrations had brought certain conditions for foreigners to enjoy this right. In contrary to the statement in the constitution, “everyone has the right to assemble... without prior permission”, Article 3 of Law No. 2911 requires foreigners to obtain permission from the Ministry of Interior to hold meetings and demonstration marches. The law also stipulates an obligation to notify the civil authority 48 hours in advance for any activity to be carried out during the meeting. It is impossible to argue that these restrictions in the law comply with the constitution and international conventions. As a matter of fact, the ECHR has accepted the right to assembly of foreigners even those who illegally resides in the country.²⁶

2.1.3. Form of the Right

Peaceful meetings may take various forms and types. However, only purposeful associations benefit from this right. It is not accurate to consider a crowd who does not share a common purpose as a peaceful meeting and uses the right of assembly. For example, the groups who are having a picnic in a public space cannot be considered as using the right to assembly. Constitutional Court states, “The right to hold meetings and demonstration marches, regulated in Article 34 of the Constitution, aims to protect the ability of individuals to come together to defend their common ideas and to announce them to others.”²⁷ There is no limitation in terms of the purpose of the meeting. Gatherings for any political, artistic, commercial or religious purpose can benefit from the right. On the other hand, in order to benefit from the right to assembly, making a plan in advance is

²⁴ The Committee on the Rights of the Child demanded that this rule to be changed, stating that it is contrary to Article 15 of the Convention, Turkey, CRC/C/TUR/CO/2-3, § 38.

²⁵ İHK, 37 nolu Genel Görüş, para. 5.

²⁶ Cisse/Fransa, Appl. No: 51346/99, 09.04.2002; Galstyan/Ermenistan, Appl. No: 26986/03, 15.11.2007.

²⁷ Ali Rıza Özer ve Diğerleri Kararı, B. No: 2013/3924, 6/1/2015, § 115; Ali Sarıpınar (2) Kararı, B. No: 2013/6186, 9/3/2016, § 71; Gülşah Öztürk ve Diğerleri Kararı, B. No: 2013/3936, 17/2/2016, § 66; Osman Erbil Kararı, B. No: 2013/2394, 25/3/2015, § 45.

not obligatory. Gatherings that develop suddenly for a purpose like Flash Mobs also enjoy this right.²⁸

Peaceful assembly whether organized outdoors, indoors, online, in a public space or a private space, are in the scope of this right. Peaceful gatherings can be planned in various ways such as demonstration, protest, meeting, parade, rally, sit-in and candle ceremony. This gathering can be organized as mobile events like parades or marches as well as immobile protests or strikes in front of the workplace.²⁹ Meeting of an organization in a private café³⁰, the meeting of two communities in the neutral zone in Cyprus³¹, cultural meetings³², religious and spiritual meetings³³ are also some of the cases evaluated in the scope of ECHR article 11.

Law No. 2911 on Meetings and Demonstrations classifies two types of gatherings; meetings and demonstrations. However, whether defined by the law or not, any purposeful gathering has the ability to benefit from the scope of the right. This right involves the right to choose the time, place and form of the meeting within the limits set in the relevant documents.³⁴ According to the Constitutional Court, “As the purpose of organizing a meeting and demonstration march is to express an opinion, defend common interests, create public opinion within the framework of certain ideas and opinions, and influence political decision-making bodies, the place that the meeting and marches will be organized is essential for the purpose of these ideas to reach its target audience and to make an impact.”³⁵ Consequently, the right to assembly includes the right to determine the meeting venue. Public authorities may interfere with the decision on meeting venue in regards to public safety and the protection of the rights of others. But an area should not be prohibited from demonstrations due to categorical reasons. The Constitutional Court has annulled the phrase “public roads” from places where freedom of assembly cannot be exercised in Article 22 of the Law No. 2911 on meetings and demonstrations,

²⁸ Obote / Rusya, 2019

²⁹ IHK, 37 Nolu GG, para. 6.

³⁰ Emin Huseynov / Azerbaijan, 2015

³¹ Djavit An / Turkey, 2003

³² The Gypsy Council ve Diğerleri / Birleşik Krallık (kar.), 2002

³³ Barankevich / Rusya, 2007

³⁴ *Sáska / Macaristan*, 2012, §§ 21-23

³⁵ AYM, E. 2014/101, K. 2017/142, 28/9/2017, § 25.

finding it unconstitutional.³⁶

The interference power of public authorities is limited in the cases where the purpose of the meeting and the meeting venue is related³⁷. Moreover, in the cases where it is found unsafe to organize a meeting in a venue, there should be guidance on a new venue and directions to sway these people who wants to exercise their right to assembly in the way that the purpose of the meeting remains valid.³⁸

Likewise, the right to determine the time and duration of the show is also within the scope of the right. According to the ECHR, in the cases where the purpose time and duration of the meeting is relevant, no restrictions should be imposed on this matter.³⁹ Meetings, therefore, can be held during the day or at night, on weekdays or on weekends, they can last for a few hours or a few days. In addition, in cases where the purpose of the meeting is to commemorate or celebrate a certain event, public authorities should not interfere with the holding of this meeting on a certain date.⁴⁰

According to the ECHR, in the cases where the purpose time and duration of the meeting is relevant, no restrictions should be imposed on this matter

2.1.4. Relation of the Right with the Freedom of Expression

In some circumstances, whether an application will be examined under freedom of expression or the right to assembly may be subject to doubts. Primarily, it should be noted that the right to assemble is a form of expression and every meeting and demonstration is within the scope of freedom of expression. However, since the right to assemble is specially protected, the rules on freedom of expression are general rules (*lex generalis*), and the rules on the right to assembly are special rules (*lex specialis*).⁴¹ Therefore, matters that are within the scope of freedom of assembly should be evaluated within the framework of the right to assembly, which is a special rule. In this context, one of the distinguishing criteria developed by the ECHR is that the participants not only want to express their opinions but also want to do it together with others in exercising the right to freedom of assembly.⁴² In the

³⁶ AYMK, E. 2014/101, K. 2017/142, 28/9/2017.

³⁷ *DİSK ve KESK/Türkiye*, 201

³⁸ AYMK, *Ali Rıza Özer ve Diğerleri Kararı*, B. No: 2013/3924, 6/1/2015, § 142.

³⁹ *Cisse/Fransa*, 2002, § 37-39, 51-52.

⁴⁰ *Samüt Karabulut/Türkiye*, 2009, § 37-38.

⁴¹ *Ezelin / Fransa*, 1991, § 35; *Schwabe ve M.G / Almanya*, 2011, §9

⁴² *Primov ve Diğerleri / Rusya*, 2014, § 91

Court's approach, one of the aims of freedom of assembly is to form a safe space for public discussion and express the protest openly.⁴³

Therefore, the Court examined the prosecution of those who called for support for unauthorized demonstrations in a message published on the Internet under Article 11.⁴⁴ However, the Court found it appropriate to examine the application of a journalist who was judged and punished for failing to cooperate with the police while covering the G4 summit, under article 10, taking into account the general principles set forth in Article 11 of the Convention.⁴⁵ In cases where the applicants' complaints mainly relate to their convictions for peaceful meetings, the ECHR deals with these complaints only within the scope of Article 11. ⁴⁶However, the Constitutional Court examined the application of the applicant, who was punished for speaking at an open-air meeting, Sırrı Süreyya Önder's application, in terms of freedom of expression.⁴⁷ In making this decision, the Court was content to refer to its own qualifying power but did not discuss why it did not examine the case under the freedom of assembly. In the application of Selahattin Demirtaş (9), considering that the applicant was prosecuted for shouting slogans in favor of the organization and carrying the organization's flag in the meeting attended by the applicant, the Constitutional Court examined the application within the scope of the right to assembly and demonstration.⁴⁸

2.2. Forms of Interference

Interference with the right of the assembly comprises measures taken before or during a public meeting as well as sanctions imposed after the meeting. In order to perceive an act as an intervention, an active stance of public authorities is not necessary, even in some cases passiveness and absence of such an active stance when it is needed can be considered as interference with the right to assembly. It should be pointed out that interventions to mass demonstrations may constitute an interference not only with the right to assembly but also with the right to protect personal inviolability, corporeal and spiritual existence of the individual, the prohibition

⁴³ *Éva Molnár / Macaristan*, 2008, § 42

⁴⁴ *Elvira Dmitriyeva / Rusya*, 2019, § 77-90.

⁴⁵ *Butkevich / Rusya*, 2018, § 122.

⁴⁶ *Kudrevičius ve Diğerleri / Litvanya*, 2015, § 85.

⁴⁷ *Sırrı Süreyya Önder [GK]*, B. No: 2018/38143, 3/10/2019.

⁴⁸ *Selahattin Demirtaş (9)*, B. No: 2017/28948, 15/6/2021, § 29.

of torture and mal-treatment, or the right to life or other rights depending on the subject and extend of the interference. Due to this reason, which rights are related to the scope of the intervention should be established. The main forms of interference with the right of assembly can take place before, during or after the meeting.

2.2.1. Refusal of the meeting

As mentioned above, Constitution had recognized the right to assembly as gathering “without permission”. Therefore, exercising this right cannot be subjected to the condition of obtaining permission. Except for the law that has been mentioned above, no: 2911 regarding foreigners, it is indicated that the right to assembly can be exercised without permission. On the other hand, the Law stipulates an obligation to notify the civil authority 48 hours in advance. Constitutional Court has found this obligation constitutional as to provide safety in meetings and to take precautions in public order. According to the Constitutional Court, the purpose of the notification is to give enough time to authorities to detect the meetings compatibility with the law and take the needed precautions including safety.⁴⁹ The period of notification must be reasonable and determined in a way that does not render the exercise of freedom impossible or meaningless for those who will exercise the freedom of assembly.⁵⁰

The ECHR concludes that states have a margin of appreciation in determining the preliminary administrative procedures in the form of authorization or notification⁵¹ and that these procedures are not contrary to the Convention as long as they do not constitute a disguised obstacle to the freedom of peaceful assembly protected by the Convention.⁵² However, for this, the procedural requirements must be “sufficiently clear”⁵³ and

⁴⁹ AYMK, E. 2014/101, K. 2017/142, 28/9/2017, § 87.

⁵⁰ Aynı karar, § 89.

⁵¹ *Lashmankin ve Diğerleri / Rusya*, 2017, § 422.

⁵² *Éva Molnár / Macaristan*, 2008, § 37.

⁵³ In *Primov and Others / Russia*, the Court held that although the applicants had mailed the notification letter within the time prescribed by law (not earlier than 15 days, but not earlier than 10 days prior to the meeting), the authorities had been delivered less than 10 days due to the delay in the mail. examined the fact that he did not allow the meeting on the grounds that no notification was made. It decided that the regulation was not “sufficiently clear”, as it was unclear whether “being present” in the notification meant the postal date or the delivery date for notifications made by letter §§ 121-128.

must not be applied in a way that limits the freedom of assembly. To this end, for example, legislation aimed at reconciling the conflicting interests of two opposing groups that want to hold a meeting at the same time and place is not contrary to Article 11 unless it constitutes a covert obstacle to the freedom of peaceful assembly.⁵⁴ However, a very long and inflexible notification period cannot be a necessity of a democratic society.⁵⁵

In emergent states that require immediate response, spontaneous demonstrations that do not comply with the notification obligation can cause a problem. In terms of spontaneous meetings, whether the meeting was held peacefully or not, besides its compliance with the notification obligation should be considered.⁵⁶ The Constitutional Court has classified the dispersion of the meeting as a disproportionate interference if a peaceful meeting was held in special cases where an immediate reaction was justified. As a rule, if the meeting is held peacefully and urgently, the fact that the notification obligation has not been fulfilled should be ignored.⁵⁷ Therefore, interferences in the extent of undermining the essence of the right, even though demonstrations are considered illegal due to the absence of permission or notification cannot be accepted as legitimate.⁵⁸

Public authorities can interfere with the venue of demonstrations to some extent. The ECHR has accepted that contracting countries may impose restrictions on holding demonstrations particularly in deciding location due to public safety concerns.⁵⁹ However, the examination should be made, whether these interventions are necessary and proportionate in a democratic society. In the decision of *Berladir and Others / Russia*,⁶⁰ the Court examined whether it was reasonable for the public authorities to suggest another ven-

⁵⁴ *Csiszer ve Csibi / Romanya*, 2020, § 105.

⁵⁵ In the *Lashmankin and Others / Russia* decision, the Court examined the punishment of the applicants on the grounds that the obligation of not complying with the ten days and in exceptional cases three days' notice for demonstrating to protest the discussion of a bill that was put on the parliament's agenda two days ago, and that the law will not allow demonstrations against sudden events. found its implementation in strictness contrary to the Convention § 456.

⁵⁶ *Oya Ataman /Turkey*, 2006, § 39.

⁵⁷ *Ali Rıza Özer ve Diğerleri Kararı*, B. No: 2013/3924, 6/1/2015, § 121; *Osman Erbil Kararı*, B. No: 2013/2394, 25/3/2015, § 67.

⁵⁸ *Navalnyy / Rusya* [BD], 2018, §§ 99-100 ve *Cisse / Fransa*, 2002, § 5

⁵⁹ *Malofeyeva / Rusya*, 2013, § 136; *Disk ve Kesik / Türkiye*, 2012, § 29

⁶⁰ *Berladir ve Diğerleri / Rusya*, 2012, §§ 47-51

ue for the demonstration to the applicants. In the end, Applicants' rejection of the proposal of the public authorities to hold the demonstration in another wider square in the city center in order not to hinder pedestrian and vehicle traffic was found there was no violation of their right to assembly.

In order to limit the decision of the meeting venue with the reason of "obstructing traffic", The Constitutional Court seeks the condition of "extreme and unbearable" disruption of the daily life.⁶¹ The court has annulled the phrase in Article 6 of Law No. 2911, "it will not cause difficulties in daily life of a citizen" concluding that the rule was not proportional. Noting that an interference with the right to assembly can be justified only if it makes daily life "extremely and unbearably" difficult, and due to the fact of lack in criterion in the current regulations on the extent of disruption of daily life, the Court stated that the restriction of meeting venues could not be considered as a necessity in a democratic society, as some difficulties that should be tolerated in a democratic society.⁶² Moreover, in some cases, refusal of a permission to a meeting may constitute an interference with freedom of assembly, even if the meeting is held as scheduled.⁶³ On the other hand, cancellation of a permit in the last minute due to security concerns also interferes with the freedom of peaceful assembly. The legitimacy of such cancellations should be considered within the framework of principles.⁶⁴

2.2.2. Preventive detention for blocking participation to a meeting and restraining access to a demonstration

Interventions to prevent people from participating in a demonstration also constitute an interference with the freedom of peaceful assembly. For example, the detention of the applicants during the G8 summit in order to prevent demonstrations was an interference in the right of assembly.⁶⁵ In a similar fashion, arresting an applicant at the airport and blocking him/her take the flight, causing to miss the meeting is interference with an individual's right to freedom of assembly.⁶⁶ Likewise, the ECHR found that the suspicious convictions of applicants and their detention for accuses

⁶¹ AYMK, E. 2014/101, K. 2017/142, 28/9/2017, § 123.

⁶² Agk., § 52

⁶³ *Bączkowski and Others / Polonya*, 2007

⁶⁴ *Makhmudov /Rusya*, 2007, §§ 55-56 ve § 71

⁶⁵ *Schwabe ve M.G / Almanya*, 2011, §102.

⁶⁶ *Kasparov / Rusya*, 2016, § 66

related to violations of public order were in fact aimed at preventing them from participating in opposition protests and constituted an interference with the right to peaceful assembly.⁶⁷

ECHR in the case of *Djavit An / Turkey* had concluded that authorities of the Turkish Republic of Northern Cyprus (TRNC) has intervened with the right of participation in a peaceful gathering, of the applicant when they didn't allow him/her to cross to the neutral zone for bi-communal meetings.⁶⁸ Completely closing down a public venue to demonstrations by public authorities on the grounds of an imminent threat of violence.⁶⁹

2.2.3. Dispersion of a demonstration and use of force

Measures such as the decision of public authorities to disperse the meeting, blocking the participants, physical intervention by the police during the dispersal, spraying gas or water, or detaining peaceful participants during a demonstration or rally, constitute an interference with the right to freedom of peaceful assembly.⁷⁰

The fact that a meeting was held contrary to the notification obligation does not give a right to the state for interference with the freedom of assembly. As stated above, even if the state defies a meeting to be against the law, if it is a peaceful meeting, the state's approach must be with tolerance as a necessity. According to the Constitutional Court, "It is a requirement of a pluralist democratic state to be patient and tolerant to the non-violent and harmless behaviour of people who comes together for peaceful purposes while exercising their right to assembly. On the other hand, if the threats to public order arising from the exercise of the freedom of assembly have a real ground, the related authorities may take measures to dispose of these threats. Penalties may also be imposed in case of holding meetings contrary to these measures, attending such meetings or committing crimes in such meetings".⁷¹ At this stage, whether a partici-

⁶⁷ *Huseynli ve Diğerleri / Azerbaycan*, 2016, §§ 84-97.

⁶⁸ *Djavit An / Türkiye*, 2003, §§ 56-62; ayrıca bkz. *Adalı / Türkiye*, 2005

⁶⁹ *Primov ve Diğerleri / Rusya*, 2014, § 97

⁷⁰ *Oya Ataman / Türkiye*, 2006, §§ 7 ve 30; *Hyde Park ve Diğerleri / Moldova*, 2009, §§ 9, 13, 16, 31, 41, 44 ve 48; *Primov ve Diğerleri / Rusya*, 2014, § 97; *Laguna Guzman / İspanya*, 2020, § 42; *Zakharov ve Varzhabyan / Rusya*, 2020, § 88.

⁷¹ AYM, *Eğitim ve Bilim Emekçileri Sendikası ve Diğerleri Kararı*, B. No: 2014/920, 25/5/2017, § 81.

part who was using their right to assembly had committed any violent act should be considered and even if the gathering was against the law, some extent of tolerance is expected to be shown to participants who haven't committed any violent act.⁷²

2.2.4. Sentences after the demonstration

After the meeting, the imposition of various sanctions on organizers or participants on the grounds that the meeting or demonstration is unlawful also constitutes an interference with the right to peaceful assembly. The ECHR has stated that if there are clear and accepted linkages between the applicants' exercise of their freedom of peaceful assembly and their arrest, detention and charge, it would constitute an interference with their right to peaceful assembly.⁷³

This will not change, even if people were detained after the demonstration dispersed.⁷⁴ Even if people deny the allegation that they participated in the demonstration, if judicial or administrative action is taken or a penalty is imposed on the grounds that they attended the meeting, this constitutes an interference with the right to peaceful assembly.⁷⁵ Because if it is not accepted as such, the person will be faced with the dilemma of either accepting the acts for which he is accused of or not being able to benefit from the rights in the Convention. This would violate the principle of *Nemo Tenetur*, "no man has to accuse himself". Acquittal of persons following the prosecution does not mean that there was no intervention. The deterrent effect of police interference and prosecution to disperse the demonstration also is a form of interference.⁷⁶

2.3. Legality of the Interference

Interferences with the right to peaceful assembly must have a legal basis. Moreover, it is not enough for public authorities to rely on the law. The law that is into consideration also needs to be clear and foreseeable. An individual should be able to predict the results of his/her actions with the help

⁷² A.g.k. § 91.

⁷³ *Navalnyy ve Yashin / Rusya*, 2014, § 52

⁷⁴ *Frumkin / Rusya*, 2016, § 138; *Varoğlu Atik ve Diğerleri / Türkiye*, 2020.

⁷⁵ *Zülküf Murat Kahraman / Türkiye*, 2019, § 45; Aksi yöndeki bir karar için bkz. *Kasparov ve Diğerleri / Rusya*, 2013, § 86.

⁷⁶ *Nurettin Aldemir ve Diğerleri / Türkiye*, 2007, §§ 34-35.

of a professional when needed for the implementation of the law. If the law does not assure prevention of arbitrary treatment of public authorities, it cannot be foreseeable.⁷⁷

In the case of *Djavit An / Turkey*, the ECHR decided that there was no legal basis for rejection of permission as there was no law regulating allowances of the Turks living in the TRNC to cross the “neutral zone” in order to attend a peaceful meeting with the Greek Cypriots.⁷⁸

Similarly, in the case of *Işıkırık/Turkey*⁷⁹, the Court found that since the applicant who had attended a peaceful meeting was found guilty of committing a crime for a terrorist organization and was punished as a terrorist organization member according to Article 220/6 of the Turkish Penal Code (TPC). It was decided that there was no difference between attending a peaceful meeting and committing a crime within the hierarchy of a terrorist organization. With this reason, mentioned provision as can be observed from this concrete case was found unpredictable in implementation.

Likewise, in *Hamit Yakut's*⁸⁰ application the Constitutional Court evaluated whether the conviction of the applicant who participated in a peaceful demonstration was lawful or not as he was convicted for committing a crime on behalf of the organization, despite not being a member of the organization according to Article 220/6 of the TPC. Considering how the mentioned provision regarding participation in meetings and demonstrations was implemented by the Supreme Court, the Constitutional Court stated that the terrorist organization's call for a meeting was deemed sufficient to punish those who attended the meeting for this crime and that even if there was no call, attending to meetings held on days or issues which attached importance by the terrorist organization is also seen as a crime and concluded

⁷⁷ *Rotaru / Romanya* [BD], 2000, § 52; *Maestri / İtalya* [BD], 2004, § 30; *Gorzelik ve Diğerleri / Polonya* [BD], 2004, §§ 64-65; *Sindicatul “Păstorul cel Bun” / Romanya* [BD], 2013, § 153

⁷⁸ *Djavit An / Türkiye*, 2003, §§ 64-68.

⁷⁹ *Işıkırık/ Türkiye*, 2017, § 70. Benzer diğer kararlar için bkz. *Zülküf Murat Kahraman/Türkiye* (B. No: 65808/10, 16/7/2019; *Seyfettin Demir/Türkiye*, B. No: 45540/09, 19/5/2020; *Celal Altun/Türkiye*, B. No: 25119/11, 23/6/2020; *Ali Abbas Yılmaz/Türkiye*, B. No: 41551/11, 7/7/2020; *İlyas Gündüz/Türkiye*, B. No: 64607/11, 7/7/2020; *Kerçin/Türkiye*, B. No: 55038/11, 7/7/2020; *Ramazan Taş/Türkiye*, B. No: 42153/11, 7/7/2020; *Bozan/Türkiye*, B. No: 56816/10, 4175/11, 29/9/2020; *Mustafa Çelik/Türkiye*, B. No: 46127/11, 8/12/2020; *Kervancı/Türkiye*, B. No: 76960/11, 8/12/2020;

⁸⁰ *Hamit Yakut* [GK], B. No: 2014/6548, 10/6/2021.)

that the judicial opinion in this regards is unpredictable. As a result, the Court concluded that although the applicant is not a member of a terrorist organization, as applied to the applicant in the concrete case, paragraph (6) of Article 220 of the TPC, which regulates the crime of committing a crime on behalf of the organization, cannot be considered specific in terms of content, purpose and scope, since the provision in question cannot assure legal protection to the applicant against arbitrary interference with his constitutional right protected by Article 34 of the Constitution. The conclusion was made, the interference resulting from the implementation of this provision was not able to meet conditions of legality.⁸¹ Later on, the Court decided that the issue was caused by the Law, and with a pilot decision model, notified the decision to the TGNA for amendments.

ECHR's decision in the case of *Mkrtchyan / Armenia*⁸² was that the punishment of the applicant who participated in a street procession, under the law of the former Soviet Union was unpredictable as there was no rule indicating that rules in the former Soviet Union laws were still in force in Armenia.

In numerous applications filed against Russia, the Court found that the legal framework for meetings gave the authorities a very wide discretionary power to propose changes in the venue, time and form of public meetings;⁸³ Court decided that the law lacked adequate and effective legal safeguards against the arbitrary and discriminatory practice, on the grounds that what "meetings obliged to notification" was too vague and open to arbitrary interpretation.⁸⁴

Similarly, in a number of applications against Azerbaijan, the Court stated that the legislation gave a wide discretionary power to prohibit or suspend a public meeting, to restrict or change the venue, route and/or time of the meeting, and to designate special zones for meetings. Concluding that the legislation in question is not predictable, as it does not contain any assurance that will prevent public authorities to misuse this power.⁸⁵

⁸¹ Agk., § 116.

⁸² *Mkrtchyan / Ermenistan*, 2007,

⁸³ *Lashmankin ve Diğerleri / Rusya*, 2017, §§ 410-471.

⁸⁴ *Navalnyy / Rusya* ([BD], 2004, §§ 114-119

⁸⁵ *Gafgaz Mammadov / Azerbaycan*, 2015, §§ 54-57; *Huseynli ve Diğerleri / Azerbaycan*, 2016

2.4. Legitimate Purpose

Fundamental rights can only be restricted in order to achieve the legitimate purposes indicated in the relevant article. As specified in the constitution and conventions, the right to peaceful assembly may be restricted for some reasons such as protecting the public order, public security, prevention of crime, concerning public health, public morals and protection of the rights of others. Therefore, public authorities cannot interfere with this right for any reason other than those that are specified.

It should be agreed upon that, public authorities have a relatively wide margin of appreciation in determining the purpose of the interference. Due to this fact, supervision of the Courts in this regard is quite restricted. However, this does not mean that public authorities can act completely arbitrarily, courts can check whether the given reasons are judicious. In the circumstance where interference cannot be justified within the framework of the stated purposes, the decision will be in the absence of legitimate purpose.

For that matter, the ECHR determined with contextual evidence that the main purpose of the detention of a political opposition leader seven times in two years was to prevent this person from participating in anti-government demonstrations and to control and silence the opposition, and stated that such a purpose is incompatible with the fundamental values of the Convention, the rule of law and effective democracy, and the Court concluded that such a purpose had failed to comply with the legitimacy under Article 11 § 2.⁸⁶

In particular, the Court considers that states' margin of appreciation is narrower with regard to limitations made on the basis of the purpose of the demonstrations. Just as in a democratic society, all kinds of opinions should be defended as long as they do not encourage hatred and violence. Moreover, the Court decided that requests for constitutional amendments, including the change of borders, cannot be considered as a reason for a direct ban on relevant meetings, on the grounds that demanding land in speeches and demonstrations does not pose a direct threat to the territorial integrity and national security of the country.⁸⁷

⁸⁶ *Navalnyy / Rusya* ([BD], 2018).

⁸⁷ *Stankov ve the United Macedonian Organisation Ilinden / Bulgaristan*, 2001, § 97

2.5. Necessity in a Democratic Society

Interferences with the right to peaceful assembly must be necessary in a democratic society. Interference might be necessary for a democratic society; if it corresponds to a “coercive social need”, if it is proportionate to the legitimate purpose pursued and if the reasons put forward by public authorities to justify the interference are “relevant and sufficient”.⁸⁸ However, the concept of “necessity in a democratic society” lacks flexibility of terms such as “beneficial” or “desirable”.⁸⁹ The Court examines the concept of necessity in a democratic society within the framework of the principles of the Convention, taking into account the margin of appreciation of the state’s parties and without substituting its own judgment for the discretion of the local authorities. This means in particular that the Court must ascertain whether the State exercised its margin of appreciation reasonably, carefully and in good faith. Although the term of proportionality does not take place in the European Convention on Human Rights, the Court considers the principle of proportionality as a component of the principle of necessity in a democratic society. In this regard, the principle of proportionality requires that a reasonable balance be sought between the fundamental rights of the individual and the benefit of the public from the interference.⁹⁰

In the context of the right to peaceful assembly, the fundamental criteria on the assessment of necessity and proportionality in a democratic society in terms of the most common forms of interference are discussed below.

2.5.1. Refusal of a meeting and dispersion of an unauthorized meeting

As mentioned above, the exercise of the right to assemble may be subject to the obligation of permission or notification. However, even in these cases, the absence of prior consent or notification leads the meeting to be considered illegal, but this fact does not provide a carte blanche for public authorities to intervene in such meetings. Eventually, in any event, the interference must be necessary and proportionate in a democratic society. Therefore, the reasons why the demonstration was not allowed and what kind of threats and risks would erupt should be shared. Additionally, in the

⁸⁸ *Coster / Birleşik Krallık* [BD], 2001, § 104; *S. ve Marper / Birleşik Krallık* [BD], 2008, § 101; *Obote / Rusya*, 2019, § 40.

⁸⁹ *Gorzelik ve Diğerleri / Polonya* [BD], 2004, § 9

⁹⁰ *Kudrevičius ve Diğerleri / Litvanya* [BD], 2015, § 144.

cases when the reasons are sufficient for interference the method and procedure of this interference should also be proportionate.⁹¹

With this in mind, the ECHR found the refusal of permission as a disproportionate intervention with the reason that two meetings are requested to be held simultaneously in the same square while not sharing if there was an actual threat to ensuring security and without showing that the police cannot take adequate measures.⁹² Likewise, it has been found disproportionate to limit the place of the requested meeting by stating another meeting will be held in the same square. While the Court decides the purpose of interference was legitimate, it took into account the unilateral interference regarding the fact that there was no restriction in the other meeting.⁹³

The Court found the preconditions on the allowance of a meeting; not to bear the symbols of unregistered parties, organizations or associations, did not correspond to an “Urgent communal need”.⁹⁴ The Court emphasized that it was important for public authorities to approach with tolerance to peaceful gatherings where demonstrators did not engage in acts of violence.⁹⁵

While the ECHR accepts that interference may be necessary in cases where incidences threatening public order arise, it considers that dispersal of a demonstration on the mere grounds such as lack of prior consent or notification, despite the absence of any unlawful behavior by its participants, would constitute a disproportionate interference.⁹⁶ Public authorities must demonstrate that they have justified reasons for intervening in a demonstration.⁹⁷ The danger of disrupting traffic alone does not justify the use of coercive force by police to disperse a meeting, even if it is illegal. In such a case, it cannot be stated that the intervention of the police and the use of pepper spray is necessary in order to maintain public order. If demonstrators do not engage in violent acts, public authorities must show

⁹¹ *Primov ve Diğerleri / Rusya*, 2014, § 119.

⁹² *Lashmankin ve Diğerleri / Rusya*, 2017, § 422; *Öllinger / Avusturya*, 2006, §§ 32-51.

⁹³ *Sáska / Macaristan*, 2012, §§ 15-23

⁹⁴ *Şolari / Moldova Cumhuriyeti*, 2017, §§ 25-39

⁹⁵ *Kudrevičius ve Diğerleri / Litvanya*, [BD], 2015, § 150; *Obote / Rusya*, 2019, §41; *Ibrahimov ve Diğerleri / Azerbaycan*, 2016,

⁹⁶ *Bukta ve Diğerleri / Macaristan*, 2007, §§ 35-36.

⁹⁷ *Navalnyy ve Yashin / Rusya*, 2014.

a certain extent of tolerance to peaceful gatherings.⁹⁸ The same principles will apply where demonstrations take place in a way that does not comply with permission, such as when they go beyond the permitted area.⁹⁹

However, in meetings where people are intensively involved in violence, it will not cause a problem to disperse a demonstration as long as the intervention of the security forces is moderate.¹⁰⁰ Although, where demonstrators resort to violence to counter police violence, it may be necessary to examine who initiated the violence first.¹⁰¹

2.5.2. Sentences after the demonstration

The imposition of judicial or administrative sanctions on individuals for organizing or participating in illegal demonstrations is also a means of interference with the right to peaceful assembly, and this interference must be necessary and proportionate in a democratic society. Within this framework, the ECHR found it disproportionate to impose administrative punishments on those who participated in a stagnant demonstration, just for the fact that the meeting was held without permission and regardless of whether it caused any social unrest.¹⁰² Likewise, holding applicants who organized the event responsible for the “mass unrest” caused by disputes in the demonstration, without adequate investigation of their own actions and intentions, is considered as a violation of Article 11.¹⁰³

In evaluating the intervention’s necessity and proportionality, one of the matters to consider is the severity of the punishment.¹⁰⁴ If the implemented sanction is judicial, a stricter inspection has to be made.¹⁰⁵ For the peaceful demonstrations, as a rule, judicial sanctions especially penalties that limits the freedoms should not be implemented.¹⁰⁶

⁹⁸ *Oya Ataman / Türkiye*, 2006,

⁹⁹ *Nurettin Aldemir ve Diğerleri / Türkiye*, 2007,

¹⁰⁰ *Primov ve Diğerleri / Rusya*, 2014

¹⁰¹ *Nurettin Aldemir ve Diğerleri / Türkiye*, 2007, § 45

¹⁰² *Obote / Rusya* (2019)

¹⁰³ *Razvozhayev / Rusya ve Ukrayna ile Udaltsov / Rusya*, 2019, §§ 289-299

¹⁰⁴ *Kudrevičius ve Diğerleri / Litvanya* ([BD], 2015, § 146; *Razvozhayev / Rusya ve Ukrayna ile Udaltsov / Rusya*, 2019, § 295.

¹⁰⁵ *Rai and Evans/ Birleşik Krallık*, (dec.), 2009,

¹⁰⁶ *Akgöl ve Göl / Türkiye*, 2011, § 43; *Gün ve Diğerleri / Türkiye*, § 83

In this context, ECHR found that the six-day prison sentence, which was suspended for a period of one year, given to the applicants due to the blockage of the main road for nearly two days, was proportionate. The only de facto result of the punishment imposed on the applicants was their obligation to obtain permission if they wished to leave their place of residence for more than seven days for one year. It was indicated that this sanction was not disproportionate when compared to the public damage caused by the applicants.¹⁰⁷ Likewise, when the applicants were fined for not obtaining permission despite the fact that there was a chance to apply for a permit and the condition of the permit was limited to the designated security points, the decision was found proportionate by ECHR.¹⁰⁸

However, the Court considered it a disproportionate interference with the right of assembly to impose fines over the upper limits of the statutory fine (80% of the maximum statutory amount) by the local authorities, following the detention of peaceful demonstration participants for not obtaining permission to assemble.¹⁰⁹

In many cases, imposing a prison sentence on those who participated in peaceful demonstrations was found disproportionate by the Court. Likewise, it was found disproportionate to prevent people from participating in protest demonstrations for six days during the G8 summit.¹¹⁰

2.6. Positive Obligations

The right to peaceful assembly also imposes positive obligations on the state,¹¹¹ it is not enough for public authorities to refrain from imposing unreasonable restrictions on the right to peaceful assembly, but they must also assure this right.¹¹²

In this context, public authorities have the obligation to take measures for

¹⁰⁷ *Kudrevičius ve Diğerleri / Litvanya* ([BD], 2015, § 146

¹⁰⁸ *Rai and Evans/ United Kingdom*, (dec.), 2009; In a similar incident, the Court also found it moderate that the authorities were sentenced to a light administrative penalty for unjustifiably rejecting the proposal to hold the demonstration in a larger square in the city centre. See. *Berladir and Others / Russia*, 2012.

¹⁰⁹ *Hyde Park ve Diğerleri / Moldova* (no. 5 ve 6), 2010,

¹¹⁰ *Schwabe ve M.G / Almanya* (2011)

¹¹¹ *Öllinger / Avusturya*, 2006, § 35

¹¹² *Plattform "Ärzte für das Leben" / Avusturya*, 1988, § 34; *Djavit An / Türkiye*, 2003, § 57; *Oya Ataman / Türkiye*, 2006, § 36; *Gün ve Diğerleri / Türkiye*, 2013

the protection of all citizens and the peaceful execution of the demonstration.¹¹³ However, this obligation is not consequential but an obligation to provide the demonstration with proper tools and instruments. In other words, the state cannot be held responsible for any harm if all the proper measures have been taken. The issue here is whether the state has any negligence or intent to take proper and effective measures to fulfil its duty of protection.¹¹⁴

With this in mind, the most important duty is to the protection of legal demonstrators against counter-demonstrators violence. Authorities should take adequate measures to prevent or lessen the severity of the violence against a participant in a march.¹¹⁵ If not, they will not be fulfilling their positive obligations. It is the duty of the state to find and implement the least restrictive method to ensure that groups advocating opposing views enjoy the right to peaceful assembly equally. The existence of the risk of violence alone cannot be a justification for cancelling either of these demonstrations or both of them. In making their assessments, authorities should provide concrete predictions on the potential severity of problems that may arise to use resources to remove the threats of violent conflict.¹¹⁶

In the case of Platform “Ärzte für das Leben” / Austria¹¹⁷, where counter-demonstrators prevented the applicant association from meeting and marching, the Court considered that the authorities had reasonable and proper discretion and that two counter-demonstrations were prohibited, a large number of police officers were deployed along the route and the police did not refuse to protect the applicant association even after the applicant had agreed to change course. Therefore, the Court concluded that authorities had not failed to take reasonable and proper measures.

However, in the decision on the Frumkin / Russia¹¹⁸ case, the Court found a violation of Article 11 of the Convention. The peaceful demonstration was blocked due the failure of the police in taking “simple and specific steps”

¹¹³ *Oya Ataman / Türkiye*, 2006, § 35; *Makhmudov / Rusya*, 2007, §§ 63-65; *Gün ve Diğerleri / Türkiye*, 2013

¹¹⁴ *Giuliani ve Gaggio / İtalya* [BD], 2011, § 251; *Kudrevičius ve Diğerleri / Litvanya* [BD], 2015, § 159; *Plattform “Ärzte für das Leben” / Avusturya*, 1988, § 34; *Fáber / Macaristan*, 2012, § 39

¹¹⁵ *The United Macedonian Organisation Ilinden ve Ivanov / Bulgaristan*, 2005, § 11

¹¹⁶ *Fáber / Macaristan*, 2012, §§ 40 ve 43

¹¹⁷ *Plattform “Ärzte für das Leben” / Avusturya* (1988)

¹¹⁸ *Frumkin / Rusya*, 2016.

to establish a reliable channel of communication with the organizers prior to the assembly.

Similarly, the Court evaluated the fact that even though the applicant, who is an LGBTI Association, warned against the possibility of an attack by abusive counter-groups before a peaceful demonstration, the police forces did not take adequate security measures at the spot; there were only a few police officers, protesters were watched from afar without any intervention while under attack by the counter group. The Court has decided that the positive obligations of the state had been violated as the delayed police intervention was on dispersing and detaining the applicants, rather than allowing the peaceful demonstration to continue and focusing on the aggressive counter-demonstrators.¹¹⁹

In addition, the ECHR has emphasized the importance of taking preventive security measures, such as the availability of first aid services in the places where demonstrations are held, in order to ensure hassle-free political, cultural or other events, meetings or gatherings.¹²⁰

Furthermore, the procedural aspect of that the positive obligations of the state should be considered. In other words, it is among the duties of the state to effectively investigate and, if necessary, punish third parties who interfere with or impede the right to peaceful assembly.¹²¹ The fact that the public authorities did not make any effort to reveal the identity of the attackers in an incident where the demonstrators were attacked by masked people, and when the identity of the attackers was eventually revealed, there was no punishment and although an attacker exposed, he was paid for the act, even then the person who financed these attacks was not investigated. Due to these facts, ECHR had defined the case as a violation of the obligation to investigate.¹²²

Lastly, public authorities should avoid discriminatory treatment in the exercise of the right to peaceful assembly. In the circumstances where there are discriminatory motives are in the prohibition of a meeting or in the

¹¹⁹ *Identoba and Others / Georgia*, 2015; Similarly, for the application where the police did not protect the peaceful demonstrators from the attack of the counter-demonstrators, see *Promo Lex and Others / Moldova*, 2015

¹²⁰ *Oya Ataman / Türkiye*, 2006, § 39.

¹²¹ *Ouranio Toxo ve Diğerleri / Yunanistan*, 2005, § 43.

¹²² *Promo Lex ve Diğerleri / Moldova*, 2015.

investigation of attackers, a violation of the prohibition of discrimination in connection with the right to peaceful assembly will also surface.¹²³

3. FACTS TO KNOW WHEN EXERCISING THE RIGHT TO MEETING AND DEMONSTRATE: ORGANIZING, PARTICIPATING AND VIOLATIONS OF RIGHTS

In the recent political history of Turkey, one of the most common rights intervened with was undoubtedly the right to assembly and demonstration. The political conjuncture just before 2016 and the coup attempt in 2016 lead to a subsequent transition to a political order in which freedoms are restricted and this very fact made interference in the exercise of this right common. The measurements for the ongoing pandemic that started in 2020, have already created a natural barrier to the de facto gathering of individuals, undermining the actual use of both the right to assembly and the right to demonstrate.

When the last 10 years is reviewed, the criminal investigations opened based on Law No. 2911 seems to have decreased over last the few years. The number of investigations, which was 16,283 in 2011, increased to 17,137 in 2012, 25,965 in 2013, 26,151 in 2014, 31,268 in 2015, and 21,576 in 2016. There has been a remarkable decrease in the number of investigations opened after this date. The number of investigations decreased to 11,702 in 2017, 8,728 in 2018, 7,331 in 2019 and 6,770 in 2020.¹²⁴ The main reason for this downtrend is not the decrease in the rate of criminal investigations against demonstrations but it is the decrease in the number of meetings hold and marches demonstrated after the 2016 coup attempt. With the constitutional amendment and under the Presidential Government System, meetings and demonstration marches can be easily banned and investigations can be opened against those who participated in these demonstrations for other acts during the demonstrations apart from opposition to Law No. 2911, such as insulting the President with slogans. While the number of investigations opened opposing Law No.

¹²³ On the discriminatory motive of not allowing the demonstration, see: *Bączkowski and Others / Poland*, 2007; Regarding the non-investigation of aggressor third parties with discriminatory motives, see. *Identoba and Others / Georgia* (2015)

¹²⁴ The data is obtained from the annual reports of the Ministry of Justice, Judicial Statistics and Registry Directorate.

2911 has decreased, there was an increase¹²⁵ in the investigation in other fields. The increased investigations on Anti-Terror Law, which includes the crime of terrorist propaganda, from the crimes against the credibility and functioning of the Public Administration in terms of Resisting the Duty, the crime of insulting the President and Article 3 which is included in the Crimes Against the Signs of Sovereignty and the Dignity of Their Organs can be seen as partly a concrete reason.

Although the number of criminal investigations based on Law No. 2911 has fallen in recent years, considering almost every use of this right results in criminal proceedings, it can be said that the use of the right is widely interfered with. It is essential to know what ways to follow when an unjust interference is encountered and what to be careful about while exercising a right that is subject to such widespread interference. For this reason, in the following sections, we will examine the components of this right, what kinds of unjust interference can be encountered, and lastly what can be done regarding these interferences.

3.1. The Forms of Unjust Interference, Precautions and Paths in Resolution

As the right to assembly and demonstration can be exercised in various forms, unfair interference faced can take up various from too. These interventions may result from the intervention of the administration, the judicial decision or the actions of private individuals. Regardless of how and by whom the intervention is carried out, it is inevitable that the state's responsibility for the intervention arises due to its positive and negative obligations. The state is obliged not to violate this right, but also to take measures to prevent private individuals from violating this right, and to ensure that this violation is remedied if there is a violation. In this regard, the framework of the right should be drawn broadly.

3.1.1. Unjust Interference of the Administration

3.1.1.1. Frequent Image Recording by Law Enforcement

Law enforcement frequently does audio and video recordings during meetings and demonstrations. It is obvious that the use of audio and vid-

¹²⁵ See: Data Ministry of Justice, Judicial Statistics and Registry Annual reports

eo recording devices will create psychological pressure on the demonstrators. In addition, it should be taken into account that it will create a deterrent effect by adding an illegitimate appearance to the exercise of the right for those who use the right.¹²⁶ In this respect, it can be seen as an unfair intervention.

3.1.1.2. Interferences with the Banners and Placards

During meetings and demonstration marches, law enforcement forces frequently control banners and placards and prevent the use of those they do not approve of. The possibility of this intervention of law enforcement forces may cause arbitrariness should be taken into account.

3.1.1.3. Prohibiting, Postponing, Blocking

Meetings and demonstration marches are often subject to administrative actions in the form of bans and postponements. The administrative decisions into the discussion are generally notified at the last minute, preventing the reorganization of the people who want to exercise their right, the use of options such as rescheduling the meeting or taking a timely stay of execution or annulment decision by resorting to a judicial remedy. In some cases, the actual exercise of the right may also be arbitrarily prevented, based on general reasons by the law enforcement on illegal grounds such as “marching on this street is prohibited”, “gathering in this square is prohibited”.

3.1.1.4. Conducting a Disciplinary Investigation, Cutting Off Scholarships and Loans

There are many incidences of disciplinary investigations conducted and punishments applied by administrations of universities against students who exercise their right to assembly and demonstration. Disciplinary investigations may result in penalties such as warning, reprimand and suspension, as well as deprivation of students' right to use dormitories, scholarships and loans. While students who exercise their rights are deterred from using the right to assembly and demonstration, this also constitutes an interference with their education and property rights.

¹²⁶ Kaboğlu, “Dernek ve Toplantı Özgürlükleri”, p. 125.

3.1.1.5. Other Interferences

Unjust interferences of the administration are not limited to these. Depending on the type of demonstration and meeting march, the form of interference by administration differs. Unjust interventions can be exemplified as prevention of the opening of a student club, announcing that some individuals will not be protected against interference,¹²⁷ and not giving the hall belonging to the administration (such as municipality, university) for the event without a legal justification.

3.1.2. Punishment: Being Subject to Detention, Arrest and Criminal Trial for the Exercise of the Right

People who exercise their right to demonstrate and march are being subjected to unjust detention and arrest and undergo investigations and criminal proceedings. Unjust detention, arrest, investigation and prosecution can each be seen as a separate cause of the violation. Besides violation of the right, unjust detention and arrest due to the use of the right is also a violation of the rights to freedom and security. Being subject to investigation and prosecution for peaceful demonstration without detention or arrest can likewise be viewed as an unjustified intervention as it can have a deterrent effect on the person.

In addition to these interventions, there are also examples of other kinds of unlawful violations. For example, being subjected to psychological or physical ill-treatment during detention, not being able to benefit from the right to a lawyer. Furthermore, not being able to fully benefit from the means of defense during the trial will also result in violation of other rights such as the right to a fair trial and the prohibition of maltreatment, also to the right to assembly and demonstration.

3.1.3. Unjust Interferences by the Private Persons

3.1.3.1. Dismissal

Participants of a meeting and demonstration marches like a syndicate meeting participant may be dismissed by the employees as a deterrence policy even though this dismissal lacks a legal ground. This is a form of unjust interference by private persons.

¹²⁷ A.ge., p. 30.

3.1.3.2. Targeting and Discrediting

With the use of media, politicians, governors, public authorities and other persons put effort in targeting and discrediting those who exercised their right to assembly and demonstration marches and/or the event itself. This is clearly an unjust attack.

3.1.3.3. Threat

Those who exercise their right to assembly and demonstration marches have been threatened by various means by other persons or groups with the purpose of preventing the use of the right.

3.1.3.4. Assault

During the exercise of the right to assembly and demonstration, a de facto attack may occur. Especially in Universities the violent intervention of private security forces who does not have the duty or authority to intervene in social events or meetings and demonstration marches According to Law No. 5188. Furthermore, apart from private security, de facto attacks are carried out against people who exercise their right to assembly and demonstration marches by other groups.

3.1.3.5. Cancellation of Meeting Hall Agreement for Various Reasons

While using the right of meeting and demonstration, there may be a need for a meeting hall due to the scope of the event. But in some cases, the pressure by the law enforcement and political reasons leads owners of the meeting halls to not give permission to use the hall or cancel the agreement made with various reasons such as renovation. Even the fact that not permitting usage of the hall is a private law matter, in the case of cancellation of an agreement for various reasons after aa pressure, means intervention.

3.2. Measures to be Taken Against Interferences and Paths to Follow

There are national and international mechanisms to apply against interference. The first step is the detection of the unjustness of these interferences. Later on, in deciding what path to follow, answering who did the interference and how it was made will be decisive in the path.

- ◆ First of all, in order to carry out all processes in a healthy way, requesting a lawyer from the Legal Aid Commission of the Union of Turkish Bar Associations or getting help from a non-governmental organization focused on this field via lawyer is possible.
- ◆ One of the main paths is to fill a criminal complaint against arbitrary interferences such as frequent recording of public authorities, de-facto preventions, intervention to banners and placards as they constitute a crime.
- ◆ In the cases where there is a prohibition or postponement decision taken by the administration, it is essential to first receive and request the notification regarding the prohibition or prevention in writing.
- ◆ If the said decision is not communicated in writing; Trying to find the video and audio recordings of the obstruction, having witnesses with you and keeping a report will also be effective in creating evidence.
- ◆ After this stage, an objection can be made to the administration that decided on prohibition, as well as filing an annulment action to appeal to the court for the stay of execution.
- ◆ A criminal complaint can also be filed against the administration that prohibits or hinders (the meeting or the meeting hall) > not specified in the Turkish text,
- ◆ Obtaining the usage permission for a hall belongs to the administration, in writing from the beginning will prevent the arbitrariness that may occur later in the cases where there are concerns of obstruction by the administration.
- ◆ Disciplinary punishment for using the right of meeting and demonstration march by university students, and cutting off their scholarships and loans given by the general directorate of credit and dormitories agency are among the interventions made by the administration. For the annulment of these decisions, a lawsuit can be filed in administrative courts with a request for a stay of execution, or a criminal complaint can be filed against the public officials who made the arbitrary decision.
- ◆ On the other hand, besides the judicial mechanisms there are also judicial-like mechanisms that can be applied against the actions of the administration. Applications can also be made to institutions such as the Human Rights Investigation Commission of the Grand National Assembly of Turkey, the Provincial and District Human Rights Board, the

Ombudsman Institution, Human Rights and Equality Institution of Turkey before or together with the application to judicial.

- ◆ Informing the public about the intervention when the person is faced with criminal proceedings for exercising their right to assembly and demonstration may have a positive effect.
- ◆ In case of a penalty as a result of a trial, it is also very important to use judicial bodies and national-international means to the fullest such as applying to the Constitutional Court, the European Court of Human Rights, and the United Nations. The judicial institutions that are applied after the end of the ordinary legal remedies can also produce effective results.
- ◆ It is possible to apply to private law authorities against attacks by private individuals. In case of dismissal, reemployment lawsuits can be filed in labor courts. In private person interventions that constitute a crime such as targeting, threat or attack, one can file a criminal complaint against the people who committed these acts. Moreover, one can request material/moral compensation for the damages caused by these people. One can also request protection from the governorate or district governorate for the possibility of these acts.
- ◆ It is a common type of intervention encountered that the meeting room or space rented for meetings is cancelled for reasons of political pressure, law enforcement pressure, threats and targeting. In addition to taking legal action against those who put pressure on such situations, making a contract stating that these private spaces are decided to be used and penal clauses in the contract will prevent the owner from giving up the use of the hall without any reason. In addition, this will also make filing a lawsuit for pecuniary and non-pecuniary damages regarding the damages caused by the later cancellation of the salon contract possible

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- Temel Hak ve Hürriyetlerin Gelişimi ve Korunması: <http://politikaakademisi.org/2014/08/08/temel-hak-ve-hurriyetlerin-gelisimi-ve-korunmasi/>
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LIBERAL PERSPECTIVE REPORT

Sayı: 22, December 2021

THE STATE OF PARTICIPATORY DEMOCRACY IN TURKEY RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION

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