

# 2021

## ALMANAC

**The Rule of Law, Democracy,  
Civil and Economic Freedoms in Turkey**

*Editor: İsrail Özkan*



# 2021 Almanac

## The Rule of Law, Democracy, Civil and Economic Freedoms in Turkey

---

*Edited by* İsrafil Özkan

*Revised by* Bengü Öztan

*Contributors:* Prof. Dr. Mustafa Erdoğan, Doç. Dr. Ali Rıza Çoban,  
Ömer Faruk Şen, Enes Özkan ve İsrafil Özkan

*Design:* Serbest Kitaplar (info@serbestkitaplar.com)

© Freedom Research Association, 2022

This study has been prepared with the contributions of the Freedom House.  
Any views expressed in this study do not reflect the institutional view of the  
Freedom House.



### Freedom Research Association

---

Çankaya Mah., Atatürk Bul., No: 160 D: 10 Çankaya, Ankara, TURKEY

(312) 213 24 00 www.oad.org.tr info@oad.org.tr

özgurlukarastirmalari özgurlukar

# CONTENTS

## Foreword

### RULE OF LAW AND DEMOCRACY

13

introduction • Politicization Of The Judiciary • Expelling 13 Judges and Prosecutors from Profession by HSK • Legal Reforms • Constitutional Court's Decision of Violation Due to Strip Search • Penalties Given to Media Organizations by RTÜK • Pressure on Opposition Parties • Deaths and Pandemic Measures in Prison • Operations against the HDP • Transparency Issue • Mafia-Politics Relationship • Statement by the Committee of Ministers on Kavala • Freedom House "Freedom in the World" Report and Turkey • The Judicial Package is in the Parliament • Closure Case against HDP • Withdrawal of Turkey from the Istanbul Convention • Discussions over Istanbul Canal • First Violation Decision of the ECHR Regarding the State of Emergency Discharges • The Law on Security Investigation • Forest Fires Throughout the Country • Extending the Duration of State of Emergency for Three Years • The ECHR Makes an Important Decision to Affect the 2015 FETÖ Cases • European Court of Human Rights Decides that 427 Judges and Prosecutors Have Been Arrested Unlawfully • Discussions over Government System • Assets of 770 People Frozen • European Court of Human Rights Decides that Nazlı Ilıcak's Arrest is a Violation of the Convention • Conclusion

### CIVIL LIBERTIES

33

Introduction • Efforts to Silence Lawyers and Bar Associations • Turkish Court Rules for the Seizure of Assets of Journalists • Citizen Arrested After Criticizing Government during a Street Interview • ECHR's Decision on Demirtaş • Disproportionate Violence by Law Enforcement • New Restriction Signal from the Government on Social Media Cases of 'Insulting the President' Crime and the Suppression of the Freedom of

Expression • Restrictions on Liquor Sales in Excuse of the Pandemic • MHP Leader Devlet Bahçeli Threatens Ankara Metropolitan Mayor Mansur Yavaş • LGBT & "Pride Parade" and the Right to Peaceful Demonstration • Constitutional Court Decision of Lack of Personal-Matter Jurisdiction in Kaos GL Application • 30 Detained from the "We Cannot Find Shelter Movement" • Ministry of Interior Launches Special Inspection on Istanbul Metropolitan Municipality • President Erdoğan does not Recognize the Decisions Taken by the ECHR Regarding Kavala and Demirtaş • Conclusion

### ECONOMIC LIBERTIES

47

Introduction • The New Economy Plan • Boycott of French Goods • The Case of Halkbank • Storm in Turkish Economy • Suspicion Over Manipulation of Turkish Inflation Data • What Does Unemployment Actually Mean? • Inflation and Welfare Loss • The Fate of 128 Billion Dollars • Possible Budget Deficit in 2020 and Tax Increases • Why is Turkey Cheap? • Is Turkey's Economy Really Growing? • What is the Reason Behind Stockpiling: The Government? • A New Possibility of Credit Expansion • Minimum Wage Increase and the Risk of Deterioration in the Price Mechanism • A Stormy Year for Turkish Lira • Conclusion

### CIVIL SOCIETY

63

Introduction • FATF Recommendations and Pressures on Non-Governmental Organizations • The Survey on the Effect of the Law No. 7262 On Non-Profit Organizations • The New Proceedings Are on The Way for NGOs Receiving Funding from the Chrest Foundation • Extending DDK's Audit Authority into Cooperatives, Unions, Partnerships and Affiliates • After the New NGO Law II: LGBT+ Associations vs. Pro-Government Associations • Conclusion

This study consists of all the simplified versions of the bulletins called Freedom Observer prepared within the scope of the "Monitoring the Rule of Law and Democracy in Turkey Project" carried out in cooperation with Freedom House between October 2020 and January 2022. Freedom Observer bulletins which tackles the most significant developments in the rule of law, democracy, civil and economic freedoms in Turkey in the years 2020-2021, are written by Prof. Mustafa Erdođan, Assoc. Prof. Ali Rıza oban, mer Faruk Ően, Enes zkan and İsrafil zkan. We would like to thank both the experts involved in the project and our project team. We hope that this study will be a quick and reliable source of information and analysis for the readers in this age when the time is the most valuable asset.

*İsrafil zkan*

Freedom Research Association, Secretary General

## Foreword

Turkish democracy has been eroding at an unprecedented rate for the past decade. However, the situation was very different in the early 2000s. When AKP came to power in 2002, it was given as an extra-ordinary exemplary country that successfully implemented democracy and market reforms by respected international organizations and institutions such as the European Union and the IMF. So much so that in 2004 The New York Times said that Erdogan, who was then Prime Minister, was a successful politician who "implemented sweeping reforms aimed at meeting the strict acceptance criteria of the European Union, which supports democratic pluralism in Turkey." The question, however, remains that what happened that the 'conservative democrat' princes that Europe followed with imitation took on an oppressive and conservative authoritarian turn by experiencing such an axis shift in the field of civil, political, and economic freedoms? Over the past decade, Turkey has deviated significantly from market reforms which it had successfully imple-

mented. The country's financial and economic structure entered a high inflation stalemate, that was reminiscent of the turbulent times of the 1990s. Relations with the European Union and the IMF have now irreversibly deteriorated, and Turkey has turned its face from the democratic West to the authoritarian East.

In fact, the root of the problem lies in the fact that the institutional structure of Turkish democracy has been on the slippery slope and quite fragile to political intervention. The "bon pour l'orient" democracy move that Turkey built in the early 2000s left its place to an Islamic and authoritarian regime as the political power that the government hold became economically and politically stronger and centralized. Accompanying the institutional collapse, opposition and civil society were silenced by arbitrary and oppressive decisions, and different segments of society were imprisoned within the narrow political community of the government, which is, now, also plagued by a bigoted nationalism. As you will read

in the freedom bulletins, Turkish democracy lost all its gains one by one for the sake of the political nostalgia that the government pursued in the name of national sovereignty. So much so that the Turkish state tried to consolidate its authoritarian pressure not only in its territorial integrity, but also beyond its borders with an expansionist policy. Considering together with the MHP, which is now a partner in power, the authoritarian and exclusionary nationalist specter ruthlessly pushed even its own children out of its own political community. As a result, which we can show as the clearest sign of the power corruption in the AKP government, first the technocratic politicians, who were the architects of the AKP's golden years, were exiled from the party, and then the expansionist wing, which was the pioneers of the so-called 'zero problem with neighbors' foreign policy, was left out. At this point, the actors of the opposition have diversified and a possibility of new institutional architecture that will resurrect Turkey's democracy against the AKP-MHP power bloc has been opened. The re-establishment of a pluralistic and participatory democracy led by civil society, political parties from all points of the ideological spectrum, and human rights defenders stands as the only alternative that will bring Turkey out of its current oppressive stalemate.

In the field of economic freedoms, the intervention of a democratic visible hand must be ensured so that the market could be freed again. To this end, the Central Bank should be re-independent and the economy management should handle the mounting inflation problem. For the deteriorated fiscal structure, government expenditures should be made transparent and fiscal policies targeting the budget surplus should be introduced. Moreover, instead of the destructive growth model based on construction, which is unproductive and harms environment and cities, investments should be made in high-value-added technology-intensive sectors, and the so-called Chinese-type development model based on exports should be abandoned, and the dependence of the country's exports on imports should be reduced. However, although these proposals formed the political agenda of the government in the 2000s, these proposals were always postponed for the sake of narrow and daily interests of the government. In the field of civil liberties, Law No. 7262, which hovered over civil society, came out as the manifestation of the government's policy of taming civil society with a conservative stick. The gathering of both secular and conservative non-governmental organizations against this law, which is one of the most serious developments of the past 2021,

emerge as a very important democratic alternative. Conservative and nationalist governments' targeting of civil society as they centralize their power is not a case peculiar to Turkey. As a matter of fact, it is possible to observe similar policies in many countries. In Viktor Orbán's Hungary, the government declared war on the libertarian and liberal civil society, and as a result, many non-governmental organizations were crushed under the oppressive policy of the government. For Turkey, since rights-based advocacy is a universal phenomenon, relations and cooperation with other countries' civil societies can be considered as an important line of opposition. Regarding the rule of law, the politicization of the judiciary and its complete control by the executive continued unabated in 2021 as well. So much so that, through the judiciary, the government has injected its power into even the most micro areas of society. Moreover, not only prominent politicians and rights defenders, but also a large segment of the public, consisting of students, scientists, and ordinary citizens, have been deprived of their fundamental rights, which are protected by the constitution, by arbitrary administrative decisions. While the government is exercising its bare power through law, it has also tried to build its cultural hegemony that will provide legitimacy to its power. In this last front of the struggle for power, an oppressive counter-cultural hegemony blended with political Islam was introduced as an alternative to the pluralist and secular lifestyles that were the touchstones of the Republic. Seeing every crisis as an opportunity for such a political agenda, the government first tried to ban the sale of liquor by taking advantage of the pandemic conditions, then it put the country's most prominent

liberal science institution under authoritarian pressure by appointing a trustee rector to Boğaziçi University.

At the end of the day, society has become politically polarized, and large segment of the society has turned into the 'precariat'. In this process, which can be called as the transition from the golden years of the AKP to the nightmare years, every policy implemented under the name of stability resulted in a much greater instability. What happened in Turkey should not be seen simply as populist power practices, as one witnesses in the rise of the authoritarian right in the world. What it is, indeed, taking place is the penetration of the religious and nationalist ideology, crystallized in the AKP and MHP power bloc, into all areas of society and a total political, economic, and institutional transformation. In such a transformation process, society is seen as a functionally interconnected organic structure as part of a supreme Leviathan, and civil liberties are disappearing one after another. In order to re-establish democracy, first of all, there should be a return to the strengthened parliamentary system from the Presidential System. Only with such a regime change can the separation of powers be re-established. Structural reforms regarding the economy should be introduced and the market economy should be reactivated. These reforms should include many reforms, from a series of economic reforms aimed at reducing the country's external resource deficit to redesigning the basic institutions according to merit and principles of the market economy. Foreign direct investment should be encouraged instead of speculative foreign currency inflow, the productivity of labor should be increased and taxes should

be reformed in line with these aims. Every form of politicization of the judiciary should be prevented and the structure of the HSK, which is one of the key institutions, should be changed according to democratic principles and measures. Turkey's return to the European Union values stands as key point for every economic, civil, and political reforms. The European Union, which has been instrumentally transformed into a political monster in the discourse of national sovereignty and independence, should be discussed again in the political discourse on the axis of democracy and freedom. It should not be forgotten that contrary to what the government claims, the struggle for sovereignty of the Republic of Turkey has always been a process that goes in parallel with the deepening of democracy. In this context, the century-old democracy and freedom repertoire of the Republic is very rich in terms of its institutional practices and democratic values. The authoritarian orientation of the AKP governments, which has gained momentum since the Gezi process, is quite sterile in this respect. So much so that under the one-man rule, there is neither an institutional basis on which the government's power can rest, nor the narrow-scope Islamic-nationalist ideological doctrine can provide the government with the legitimacy it needs.

We reported for you the balance sheet of the AKP's long twenty-year rule, which witnessed a dramatic transition from conservative democracy to Islamist authoritarianism, for 2021. We shed light on the crisis in Turkey's democracy in a wide spectrum ranging from the losses in the field of economic and civil liberties to the dramatic erosions of civil society and the rule of law. Although 2021 presents

a very dark picture in terms of democracy and freedoms, it is possible to say that brighter days await Turkish democracy in 2022. Although it is very difficult to fight for democracy under the weight of economic conditions, the wrong policies of the government are driving large sections of the people, who believed in it, away from the government. The cooperation between the opposition parties regarding the upcoming elections seems to be a positive development to give hope for the future. Likewise, the criticisms of business circles and international organizations, especially towards the economic policies of the government, are increasingly isolating the government. It should not be forgotten that when the AKP came to power in 2002, it not only received the support of all segments of society, but also gained the approval of international circles. With the effect of such support for developing democratic market economy like Turkey, Turkey's decades-long problems were solved one by one, and the severity of the 2001 crisis was eliminated. Twenty years later, again in the shadow of an economic crisis, Turkey stands at a political and social crossroads. The practices of the government in the last year, unfortunately, do not give much hope for the government to return from its mistakes. At this point, Turkish civil society emerges as the most important actor as the last bastion of democracy. The struggle for freedom and democracy under the leadership of civil society has become more important than ever before in the rebuilding of the dissolved institutional and social structure. In the hope that the Republic of Turkey to become a 'democratic, secular and social state governed by rule of law' as stated in the constitution.

# RULE OF LAW & DEMOCRACY

## Introduction

The period between 2020 and 2021 has been marked with significant challenges for Turkey in many fields such as politics, economy, law, and foreign policy. In this process, the impact of both the multidimensional crises experienced at the global level and the ruptures experienced due to Turkey's own internal dynamics seems to continue for many years. In this context, we, as Freedom Research Association, tried to shed light on the readers the developments that Turkey has been going through and analyzed the rule of law, civil society, civil liberties, and economy with our bulletins titled "Freedom Observer", which we have been conducting since April 2020.

It is possible to follow the challenges faced by Turkey in the field of law

and democracy through many indicators. The fact that the constitution is reminiscent of the 1980s coup period, the politicization of the judiciary and the decrease in trust in the judiciary, the separation of powers almost to the point where it loses its functions, the fact that Turkey is almost at the bottom of the list in international indicators on human rights, the balance and inspection mechanisms become dysfunctional, and the appointments to institutions based on political criteria show that Turkey has experienced serious regressions in the rule of law and democracy.

The European Commission's document titled "EU Enlargement Policy and 2020 Enlargement Package" can reveal the gravity of the situ-

ation in Turkey. In the report, it is stated that Turkey has "regressed" in the fields of democracy, human rights, and the rule of law, and has not fulfilled the decisions of the Council of Europe in these areas. It is emphasized that the legal legislation and practice in the fields of human rights and fundamental freedoms should be harmonized with the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECHR).

In this process, we discussed the developments in Turkey in the context of the rule of law and democracy, under the title of "rule of law", which is the first title of the "Freedom Observer" bulletins. Especially, the regression in many of the criteria for Turkey's accession to the

European Union, which is included in the "Progress" Report of the European Union Commission on Turkey, can be interpreted as signs of a deep crisis in the fields of law and democracy. Turkey has experienced serious setbacks in almost all of the EU accession criteria -human rights and democratization, rule of law and independence of the judiciary, suppression of civil society, politicization of public administration and market economy. It is important to analyze the recent events from multiple perspectives in order to understand these developments, and to draw lessons and create institutions that are compatible with the rule of law and democratic practices. We tried to update the readers by making evaluations on the events and developments in 2020-21 on the axis of law and democracy.



## POLITICIZATION OF THE JUDICIARY

Another issue that reminds of the problem of the politicization of the judiciary is that the Constitutional Court has become the target of the government in April 2020, when the Court annulled the regulation in the Law on "Assembly and Demonstrations" that completely prohibits demonstrations on intercity roads. As a result of the harsh criticism of the Constitutional Court, suspicions arose that pressure was being exerted on the members of the court. Another indicator of the setbacks experienced was the allegations of torture. It was claimed that two people, who were detained by soldiers in the Çatak district of Van in 2020, on the grounds that they helped the terrorist organization, were thrown out from a helicopter. A broadcast ban was imposed on the investigation launched into the incident. Later, the reporters of the Mesopotamia Agency, who first made this news, were taken into custody.

### Expelling 13 Judges and Prosecutors from Profession by HSK

Although dismissal of a judge or prosecutor without any concrete action is clearly unlawful and stated in the Constitution, 13 judges and prosecutors, who allegedly have contact and affiliation with the FETÖ/PDY terrorist organization, have been dismissed by the HSK decision dated 27.11.2020 published in the Official Gazette dated 3 December 2020. The dismissals from the profession also damaged the principle of judgeship guarantee. In addition, these dismissals created a climate of fear on all judges and prosecutors, violating the right to a fair trial of individuals under investigation and prosecution. In addition, the announcement that a decision was made based on the analysis reports of the General Directorate of Security and Bylock contents created uncertainties as to whether concrete charges were reported to the dismissed judges and prosecutors.

### Legal Reforms

The economic downturn and the political challenges faced in December 2020 provided an agenda for the realization of legal reforms. It can be clearly observed that the current legal order in Turkey does not provide a predictable and secure legal and judicial environment for foreign investors and this situation still continues.

However, looking at the problems related to law and the judiciary from such a narrow perspective makes it impossible to implement a realistic solution program. It can be observed that in an environment where no political and judicial balance and control mechanism works, it is not possible to achieve any improvement with secondary law amendments. With the State of Emergency Decree No. 696 and the second paragraph added to Article 37 of the Decree No. 668 (Law No. 6755), it was stipulated that those who acted within the scope of suppressing the coup attempt on 15 July 2016 would not be charged for their actions, either legally, administratively, financially, or criminally. In the lawsuit filed for the annulment of this rule in terms of form and substance, the Constitutional Court decided that the rule was not unconstitutional.

### Constitutional Court's Decision of Violation Due to Strip Search

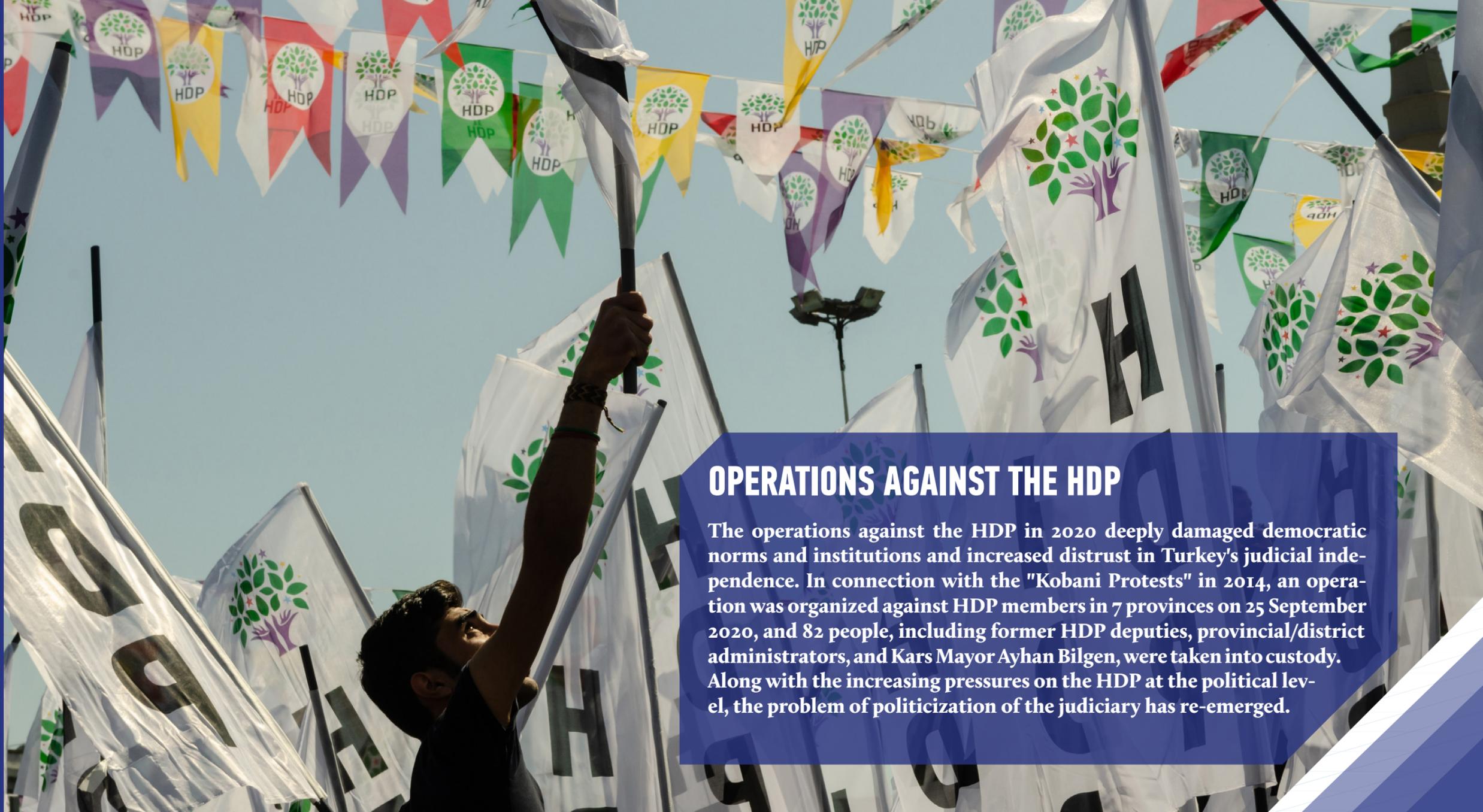
While discussing the strip search allegations brought up by HDP Deputy and Human Rights Defender Ömer Faruk Gergerlioğlu, the Constitutional Court decided in the application of Rüya Ağdaş Sönmez that the prohibition of ill-treatment was violated in terms of procedural terms since the applicant's allegations of strip-searching were not investigated effectively. The applicant claimed that she was taken to a police station in 2016, where she was beaten and forced to sit and stand while undressed. This decision of the Constitutional Court shows that cases of abuse of power by law enforcement officers are not effectively investigated by the judicial authorities.

### Penalties Given to Media Organizations by RTÜK

In early 2021, the Radio and Television Supreme Council (RTÜK) decided to fine Haber Türk channel at the highest level and stop its broadcasting 5 times. In a discussion program broadcasted on Haber Türk channel on November 28, 2020, CHP Mersin Deputy Ali Mahir Basarir used the phrase "the state's army was sold to Qatar for the first time", implying the sale of the Tank Pallet Factory to Qatar, which led to the initiation of political polemics that lasted for about a week. This approach of the RTÜK both touches the essence of freedom of expression and freedom of the press, and violates the principle of the personality of the crime.

## PRESSURE ON OPPOSITION PARTIES

In addition, the government's pressure on local authorities has increased as the opposition parties have achieved remarkable success by winning metropolitan municipalities such as Istanbul, Ankara, Adana, Mersin, and Antalya in the 2019 local elections. In this process, the government implemented policies aimed at narrowing the fields of activity of opposition municipalities and eliminated mayors in many issues that required cooperation between central and local governments. This situation undermines local democratic norms. In addition, another important development in 2020 was that the Constitutional Court, which examined the individual application of CHP's Deputy Enis Berberoğlu, decided that the right to vote and be elected was violated. Although its decision was sent to the Istanbul 14th High Criminal Court for a retrial to remove the violation, the local court rejected the request for a retrial on the grounds that it exceeded the Constitutional Court's authority and made a decision of expediency. In the observation report published by the Parliamentary Assembly of the Council of Europe, Berberoğlu's demand for the restitution of his rights without delay further increased the concerns regarding the rule of law.



## OPERATIONS AGAINST THE HDP

The operations against the HDP in 2020 deeply damaged democratic norms and institutions and increased distrust in Turkey's judicial independence. In connection with the "Kobani Protests" in 2014, an operation was organized against HDP members in 7 provinces on 25 September 2020, and 82 people, including former HDP deputies, provincial/district administrators, and Kars Mayor Ayhan Bilgen, were taken into custody. Along with the increasing pressures on the HDP at the political level, the problem of politicization of the judiciary has re-emerged.

### Deaths and Pandemic Measures in Prison

Deaths in prisons in 2020 and the measures to reduce the pandemic in prisons, where social distance and hygiene conditions are not implemented in compliance with the pandemic measures, have brought serious restrictions on the meeting of convicts and detainees with their families. However, families and the public were not adequately informed about how the pandemic affected prisons.

### Transparency Issue

With the COVID-19 cases in Turkey in March 2020, one of the most discussed issues was the transparency issue, with the Ministry of Health's use of the expression "number of patients" instead of "number of cases" in the daily coronavirus tables announced. Although many international organizations, notably the World Health Organization (WHO), state that the distinction between "case" and "patient" lacks a universal basis, this ambivalent transparency approach of the Ministry of Health has led to serious damage to the rule of law.

## FREEDOM HOUSE "FREEDOM IN THE WORLD" REPORT AND TURKEY

The Freedom in the World report, in which the results of annual research by Freedom House on the state of political rights and civil liberties in the world are announced, was published this year with the title "Democracy Under Siege". According to the report published in the first period of 2021, Turkey, which is the second country where freedom has suffered the most in the last 10 years -after Mali - is ranked 146th with 32 points out of 100 among 196 countries according to "global freedom scores". It is in the category of "not free" countries. Looking at the details of the scoring, it is seen that Turkey has 16 points out of 40 for political rights and 16 points out of 60 for civil liberties. Under these two headings, it is emphasized that Turkey has deficiencies in electoral processes, political pluralism and participation, the functioning of the government, freedom of expression and belief, organizational rights, rule of law, personal autonomy, and individual rights. Highlighting situations such as manipulating official health statistics, prosecuting health workers who criticize official statements and policies, and the arrests of hundreds of ordinary people for their social media posts about the pandemic, the report focuses on investigations against opposition political leaders, prominent civil society members and independent journalists. Failure to implement the ECHR's decisions that Selahattin Demirtaş and Osman Kavala should be released and the continuation of the appointment of trustees to HDP municipalities are cited as examples of these practices.

### MAFIA-POLITICS RELATIONSHIP

In the last period of 2020, the presence of mafia leaders in the political arena has led to the questioning of the relationship between politics and the mafia in Turkey. The fact that the mafia leaders, who lost their influence in the early 2000s, regain their visibility and create a political agenda today shows how dramatically the Turkish democracy has regressed. The fact that Alaattin Çakıcı, who was convicted of leadership of an organized crime organization, openly threatened CHP Chairman Kemal Kılıçdaroğlu in a letter he wrote, created serious questions in the minds. The fact that an organized crime leader threatens the leader of the main opposition party so easily and does not face any legal sanctions shows that the rule of law is disregarded.

At the same time, it reveals that the opposition political leaders have no security of life. Moreover, many mafia leaders such as Sedat Peker had been revealed to have relationship with politics, but there was no concrete development in this regard.

### STATEMENT BY THE COMMITTEE OF MINISTERS ON KAVALA

At the 1390th meeting of the Committee of Ministers of the Council of Europe held between 1-3 December 2020, the Turkish authorities were invited for immediate evacuation of Kavala. However, the Turk-

ish authorities did not respond to this call. Businessperson and civil society activist Osman Kavala was accused of attempting to overthrow the Government of the Republic of Turkey by using force and violence within the scope of the Gezi events investigation on 18 October 2017 (Turkish Penal Code Article 312) and attempted to abolish the constitutional order. On 10.12.2019, the ECHR decided that the applicant was arrested in the absence of any evidence to support a reasonable suspicion that he committed a crime (violation of ECHR article 5 § 1).

## The Judicial Package is in the Parliament

While the structural problems regarding the Turkish judiciary were getting worse, the government presented the 4th Judicial package to the parliament. However, no improvement is envisaged in the aforementioned package for the solution of these problems regarding the problems related to the impartiality and independence of the judiciary and the very broad interpretation of criminal laws, especially terrorism legislation, legality of crimes and punishments, the non-enforcement of penal norms, the ignorance of basic principles of law such as the personality of crimes and the presumption of innocence. The edits usually contain some minor procedural improvements. It would be a rather harsh interpretation to say that the regulations envisaged in the 4th Judicial Package are of a reform nature. It does not seem possible to eliminate the injustices caused by criminal proceedings with these regulations, which include partial make-ups.



## Closure Case against HDP

One of the important events of 2021, the Chief Public Prosecutor's Office of the Supreme Court of Appeals announced that it submitted the indictment requesting the closure of the Peoples' Democracy Party (HDP) to the Constitutional Court on 7 June 2021. The previous indictment, which was submitted to the Constitutional Court was rejected on the grounds that which acts are, in fact, against the "indivisible integrity of the state with its territory and nation", and there is no justification other than the subject of investigation and prose-

cution. It was returned on the grounds that it did not offer the opportunity to evaluate that the party had become a focal point of activities that are against the indivisible integrity of the Republic of Turkey. While presenting the reorganized indictment to the Constitutional Court, the Office of the Chief Public Prosecutor announced that 451 people were asked to ban from politics, as well as to put measures on the accounts of the party. The process of the HDP decision is still ongoing and it is kept on the agenda.

## WITHDRAWAL OF TURKEY FROM THE ISTANBUL CONVENTION

It was announced that Turkey withdrew from the Istanbul Convention with the Presidential decision published in the Official Gazette on the night of March 19 to March 20. This decision drew great reactions from different segments of society such as women's rights defenders, human rights organizations, lawyers, and politicians. In Turkey, where violence against women and femicide is high, the government's withdrawal from the Istanbul Convention means the destruction of one of the most comprehensive and important legal foundations that underpin preventive measures to protect women. The Convention, which aims to protect women and ensure gender equality, obliges the parties to take "necessary legal and other measures" to prevent all kinds of acts of violence and discrimination, and encouraged the dissemination of activities that will empower women.



## DISCUSSIONS OVER ISTANBUL CANAL

Istanbul Canal, which has been one of the issues that has been discussed frequently in the public, came to the agenda again with the foundation of a bridge laid on Saturday, June 26th. With this project, which connects the Black Sea and the Sea of Marmara, the government claims that it aims to reduce ship traffic in the Bosphorus and to create an earthquake-resistant city by promoting horizontal architecture. The projected cost of the project is approximately 15 billion dollars. President Erdoğan stated that he views Istanbul Canal as a project to save the future of Istanbul. Experts warn about the environmental impact of Istanbul Canal. For example, Environmental Specialist Prof. Dr. Mustafa Öztürk and Marine Scientist Prof. Dr. Cemal Saydam predicts that the nitrogen phosphorus load in the Marmara Sea will increase, the oxygen rate will decrease and the currents in the sea will be affected. It is thought that there will be an additional population burden of 2 million in Istanbul, which has already reached 20 million. The government ignores scientific reservations that have reached a consensus level regarding Istanbul Canal, which does not have public support and will place a heavy burden on public finances. This situation suggests that Istanbul Canal is instrumental for the narrow interests of the government and companies close to it, rather than being a comprehensively thought-out project.

## First Violation Decision of the ECHR Regarding the State of Emergency Discharges

In the Pişkin vs. Turkey case, which was announced on 15 December 2020 by the Second Chamber of the European Court of Human Rights, the applicant's right to respect for family life had been violated. As will be remembered, the applicant's employment contract was terminated based on the Decree No. 667 issued during the state of emergency even though the applicant was employed in a public institution subjected to private law. Emphasizing that the decision will set a precedent for the situation of more than one hundred thousand public officials in similar situations can be interpreted as an important turning point.

## The Law on Security Investigation

Although the provisions regarding the security investigation brought by the State of Emergency Decrees were canceled by the Constitutional Court twice, the Security Investigation Law, which the government attempted to bring to the parliament's agenda several times, was rejected by the Turkish Grand National Assembly. It, however, entered into force by being published in the Official Gazette dated April 17, 2021. The proposal numbered 220 regarding the Law No. 7315 on Security Investigation and Archive Research was discussed at the 66th Session of the General Assembly of the Grand National Assem-

bly of Turkey dated 31.03. It is criticized on the grounds that it contains significant uncertainties in terms of the substance of the law, and that it will lead to arbitrary practices and discrimination. The Law contains some vague phrases such as "who are employed in units, projects, facilities, services... that have strategic importance in terms of national security" regarding which personnel will be subject to investigation. As such, the Security Investigation Law seems far from preventing arbitrary practices in terms of the right of individuals to enter public service.



## FOREST FIRES THROUGHOUT THE COUNTRY

The forest fires that started on July 28, 2021 and continued throughout the summer in 34 provinces caused great damage to nature. The fact that the government, which spends billions of dollars on many mega projects, does not keep critically important firefighting aircraft within the Ministry of Agriculture and Forestry can be analyzed as proof of institutional inadequacy.

## Extending the Duration of State of Emergency for Three Years

With the omnibus law proposal submitted by some AKP deputies on 09.07.2021, it is foreseen that the duration of some powers introduced by the Law No. 7145 in 2018, which allows to use the powers of the state of emergency outside the period of the state of emergency, will be extended for another three years. In this context, with the amendment made to the temporary 19th article of the Law on Terrorism numbered 3713, the duration of the provision regarding the extension of the detention period up to 12 days is extended for three more years. Secondly, the duration of the provisions in the temporary Article 1 of the Law No. 7145, which stipulates the appointment of the SDIF as a trustee, is also extended. Thirdly, the duration of the provisions in the temporary article 35 of the Decree Law No. 375, which allows public officials to be dismissed from public service outside of the ordinary disciplinary processes, is extended for another three years. Thus, the government aims to hold the 2023 elections under the powers of the State of Emergency. The Constitutional Court, on the other hand, has still not given a verdict in the lawsuit filed in 2018 on the grounds that these rules are unconstitutional, despite the expiry of the rules. Extending the duration of the state of emergency for three more years poses serious drawbacks in terms of the rule of law and human rights. It is known that the extension of detention periods in Turkey is applied arbitrarily in many cases. This amendment should not enter into force in order to prevent detentions from turning into a means of punishment.

## The ECHR Makes an Important Decision to Affect the 2015 FETÖ Cases

In the Yasin Özdemir v. Turkey decision announced on 7 December 2021, the ECHR decided that the applicant's freedom of expression had been violated. The applicant was put on a trial on the charge of praising the crime and the criminal after the coup attempt of 15 July, due to the posts he made on his social media account in April 2015, and decided to defer the announcement of the verdict. Examining the applicant's complaints, the Court decided that it was not clear whether the Fethullahist organization was a faith community or an organization that illegally infiltrated the state at the time when the applicant made the aforementioned posts. Therefore, the Court decided that it was unforeseen to punish the applicant in this way.

This decision has the potential to have consequences in terms of lawsuits filed for alleged membership of the FETÖ terrorist organization. Because if the punishment given for praising the crime and the criminal is against the principle of legality, since there was no organization at the said date, the same result should also be valid for the trials made for membership of the organization. Considering that there was no court decision about the Fethullahist organization before 15 July, the mere presence of some criticisms from government circles does not seem sufficient to accept that people could predict that this organization would be considered a terrorist organization at that time. This situation will, indeed, result in a violation of the principle of legality of crimes and penalties in terms of organization membership accusations.

## EUROPEAN COURT OF HUMAN RIGHTS DECIDES THAT 427 JUDGES AND PROSECUTORS HAVE BEEN ARRESTED UNLAWFULLY

In its decision on Turhan and Others v. Turkey, announced on 21 November 2021, the European Court of Human Rights (ECHR) combined and examined the individual applications of 427 judges and prosecutors who were arrested on charges such as attempting to overthrow the government, attempting to overthrow constitutional order through force, and membership of a terrorist organization after the coup attempt of 15 July, and found that the arrests were unlawful. The Court has determined that the detention of judges, some of whom serve at the courts of first instance and some at the Court of Cassation and the Council of State, without complying with the investigation procedure stipulated in their special laws, constitutes an unlawful interference with the right to freedom and security guaranteed by the article no. 5 of the Convention. The ECHR stated that the jurisprudence of the local courts, which states that the crime of membership in a terrorist organization is a continuous crime and that it will constitute a state of flagrante delicto at any time, therefore, it can be investigated directly by the prosecutor's office and applied to protective measures without following the special procedures specified in the laws, is unpredictable. The Court also stated that the decisions of the Court of Cassation and the Constitutional Court to the contrary were also incompatible with the Convention. Thus, the ECHR disregarded the thesis of the Court of Cassation and the Constitutional Court that the national courts had the authority to interpret domestic law. The very conflict of Turkish high courts with the ECHR, even on a crucial subject such as the principle of legality that forms the basis of the rule of law, is one of the dramatic indicators of the erosion that Turkey has experienced in the field of rule of law in recent years.

## Discussions over Government System

In the 2017 referendum, Turkey switched from the parliamentary system to the Presidential System, which is called the “presidential government system”. Opposition parties continue to criticize this system, which emerged in line with the demands of the AKP and MHP and was accepted by the public with approximately 52 percent, concentrating the power in the hands of a single person and rendering the Parliament dysfunctional. In the last three years, we have witnessed that wrong decisions are taken quickly in many areas, especially in the economy, which is defended on the basis of quick decision making and implementation.

## Assets of 770 People Frozen

With the decision published in the Official Gazette dated 24 December 2021, it was decided to freeze the assets of 770 real and one legal person in Turkey on the grounds that they were members of various terrorist organizations based on Article No. 7 of the Law No. 6415 on the Prevention of the Financing of Terrorism. According to the third paragraph of the Law No. 6415 added to the Article 7 by the Law No. 7262, after the courts have definitively decided that it is a terrorist organization, the Minister of Treasury and Finance and the Minister of Interior may freeze the assets of individuals, institutions, or organizations in Turkey through a joint decision based on the existence of reasonable grounds for providing funds to these organizations and committing the crimes of financing terrorism. As it is clear from the Law that in order to freeze assets in accordance with the provisions of the Law, there must be reasonable grounds for funding the organizations that are definitively determined to be a terrorist organization by the courts and that the crime of financing terrorism has been committed. It is clear that the implementation of the Law in this way will cause serious problems in terms of predictability. Such unpredictable practices also threaten the right to private property. However, the measure brought about for a serious restriction on fundamental rights must be transparent and auditable in terms of procedure and comply with human rights guarantees in terms of content. Freezing the assets of individuals by administrative decisions without any judicial decision will violate the fundamental rights of the persons concerned, and the unpredictability caused by these decisions weakens the investment environment of the country.

## European Court of Human Rights Decides that Nazlı Ilıcak's Arrest is a Violation of the Convention

In its decision dated 14 December 2021 regarding the individual application made by journalist Nazlı Ilıcak, the ECHR decided that the applicant's the right to freedom and security (Art. 5/2) and the right to freedom of expression (Art. 10) guaranteed by the Convention had been violated. After the failed coup attempt on 15 July 2016, Nazlı Ilıcak was arrested on charges of membership in a terrorist organization, attempting to overthrow the government and attempting to change the constitutional order by force. The basis of these accusations is the applicant's employment in newspapers and televisions belonging to the Gülen organization, her publications praising the 17-25 December 2013 operations, her interviews with the prosecutors and police chiefs who carried out these operations, and her contact with members of the Gülen organization. Within this framework, the Court, first, has determined that working in legally operating media outlets alone does not constitute a suspicion of crime. Secondly, the Court reminded that the 17-25 December 2013 operations were on the agenda of all media and opposition parties, an investigation commission was established in the parliament on this issue, deputies from all

opposition parties voted to launch an investigation, and the launching of an investigation was rejected with the votes of the majority of the ruling party. In this regard, the Court stated that publications on this matter is part and parcel of journalism. The Court noted that these publications are of a matter of public interest, even though they differ from the government's stance, and should be regarded as a legitimate journalistic activity. The Court also examined the tweets that the applicant had posted after the coup attempt, which formed the basis of her accusation. Finding that all of these tweets contributed to an important public debate by the applicant, who is a journalist and columnist, did not instigate for violence in any way and did not aim to legitimize the coup attempt, the Court found that these views reflected an oppositional position against the government's approach. Further, the Court noted that similar views were also expressed by the press, politicians, and civil society at the national and the international level. Therefore, the Court decided that the applicant's right to freedom and security and freedom of expression had been violated on the charges of legitimate journalistic committed a crime.

## Conclusion

It seems that the effects of the after-shocks created by many negative developments in the fields of rule of law and democracy will continue for a long time. The fact that a country is strong and reliable in the legal sense, and that its institutions are built and regulated on the basis of democracy are sine qua non for positive developments that may arise in political, social, and economic terms. The multi-faceted regression process that has been going on for a long time in Turkey has finally dragged Turkey into a deep crisis from which it is almost impossible to get out. In particular, the de-

crease in trust in the rule of law and the judiciary, concerns about the politicization of institutions, problems regarding the failure to operate the principles of separation of powers between the legislature, executive and judiciary, and most importantly, the loss of function of the balance and control mechanisms hinder Turkey from being a democratic rule of law.

In particular, the loss of credibility of Turkish institutions in the international arena makes Turkey an introverted country. As stated, it is obvious that the damage caused

by many issues such as the problem of transparency, politicization of the judiciary, the politics-mafia relationship, the state of emergency decrees, pressures on the opposition, and Turkey's withdrawal from the Istanbul convention can only be resolved by returning to the rule of law and democracy. Public institutions, which are of great importance in the functioning of democracies, should work in line with the principle of separation of powers.

It is also possible to support the emergence of this negative picture with other data. Turkey Report, one of the most important research institutions in Turkey, conducted democracy satisfaction surveys on

citizens in 2021, where the participants were asked how satisfied they were with the functioning of democracy in Turkey. 45% of the participants were not satisfied at all; The rate of those who are not satisfied with the functioning of democracy is 56%; 12% stated that they are neither satisfied nor dissatisfied with the functioning of democracy. Finally, the rate of those who were satisfied with the functioning of democracy was 33%. Finally, Turkey's institutions should be reformed immediately given that Turkey's regression in all the rule of law and governance indices in the world, an institutional/structural erosion that has occurred in legal and administrative fields.

**CIVIL LIBERTIES**

## Introduction

The period between 2020 and 2021 has been marked with significant challenges for Turkey in many fields such as politics, economy, law, and foreign policy. In this process, the impact of both the multidimensional crises experienced at the global level and the ruptures experienced due to Turkey's own internal dynamics seems to continue for many years. In this context, we, as Freedom Research Association, tried to shed light on the readers the developments that Turkey has been going through and analyzed the rule of law, civil society, civil liberties, and economy with our bulletins titled "Freedom Observer", which we have been conducting since April 2020.

In this period, we discussed the developments in the context of civil liberties in Turkey under the title of "civil liberties", which is the second title of the "Freedom Agenda" bulletins. In the 2020 report of Freedom House, a non-governmental organization that conducts research on democracy, freedom and human rights, Turkey was included in the category of "non-free countries". Receiving 32 points out of 100 points, Turkey

ranked 146th in the "freedom" ranking, which includes 195 countries. It was stated that there are practices that harm democracy and civil liberties, such as the prosecution of opposition politicians, members of civil society organizations, independent journalists and those who criticize their foreign policy.

Again, the report published in 2021 by the Human Rights Association (İHD) and the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), the International Federation of Human Rights (FIDH) member organization, reveals oppressive practices that restrict freedom of association and lead to the gradual narrowing of the civilian space. . These statements and practices can be interpreted as the harbinger of a deep crisis in civil liberties. It is important to analyze the recent events well in order to understand these developments, to look at them from a multi-faceted perspective, and to learn lessons and move civil liberties to a better level. It is possible to list the developments as follows;



## EFFORTS TO SILENCE LAWYERS AND BAR ASSOCIATIONS

In recent months, the government's efforts to control lawyers and bar associations have accelerated. Followed by the Ankara Bar Association's reports criticizing against the anti-LGBTI slurs made by the head of the Religious Affairs and claims of torture, the government went through changes in the Attorneyship Law. Along with the changes in the Law, it became legal to establish more than one bar association in cities accommodating over than 5000 lawyers. Additionally, new changes targeted at major bar associations in terms of decreasing their representation power in the Union of Turkish Bar Associations (Türkiye Barolar Birliği, TBB). The Constitutional Court, however, cancelled the action of annulment proceeded against the changes in the Attorneyship Law. In the meanwhile, TBB approved the petition of establishment of the Istanbul Bar Association No.2 amidst the objections claiming that TBB did not thoroughly investigate the petition. Followed by the lawyer Ebru Timtik's death caused by a hunger strike that she had initiated with the claim of violation of the right to a fair trial, President Erdogan, at the opening ceremony of the Judiciary Year at his presidential palace, responded to the situation that licences of lawyers who are found to be affiliated with terrorist organizations will be revoked. Soon after the President Erdogan's statement, Chief Public Prosecutor's Office in Ankara issued a warrant for the arrest of nearly 60 lawyers within the framework of investigation of FETO terrorist organization. The majority of charges against these lawyers subjected to criticism on the grounds that their activities are strictly professional; hence the defense should not be a subject matter of such an investigation.

## Turkish Court Rules for the Seizure of Assets of Journalists

The Istanbul 14th Heavy Criminal Court ruled for the seizure of assets of the exiled journalist Can Dündar in “MIT Trucks” trial. Dündar was arrested following the publication of a news report in Cumhuriyet on the incident of “stopping of MIT trucks” for which he was sentenced to 5 years 10 months prison by the local court on the accusation of “disclosing classified state secret”. The decision, then, was reversed by the Supreme Court of Appeals in 2018. Despite being arrested in this case in 2015, however, the Constitutional Court found rights violations in Dündar’s imprisonment. After the reversal of local court’s decision by the Supreme Court of Appeals, the local court ruled for Dündar’s rearrest and declared him as a fugitive on the ground that he did not attend to the hearing. At the hearing held on October 7th, 2020, the Istanbul 14th Heavy Criminal Court ruled for the seizure of Dündar’s assets according to the articles no: 247 and 248 of the Criminal Procedure Code and appointed TMSF as a trustee. In this regard, it was stated that four properties registered on Dündar were seized.

## Citizen Arrested After Criticizing Government during a Street Interview

During a street interview in Antalya, a citizen named İsmail Demirbaş criticized the government and its policies and claimed that the President should be put on a trial. Following the publishing of the interview on social media, Demirbaş was taken into custody and arrested afterwards. Later, it was revealed that Demirbaş was arrested for the crime of ‘insulting the president’. In recent years, there has been an increasing number of prosecutions and lawsuits filed for insulting the president. Between 2014-2019, 128,872 investigations were launched within the scope of the article no. 299 of the Turkish Penal Code regulating the crime of insulting the President, and 30,738 people were sued. Standing out as one of the major threats against the freedom of expression, the article no. 299 is against the European Court of Human Rights case-law and requested to be repealed by the Venice Commission. However, there is no recommendation in this direction in the government’s legal reform programme.

## ECHR’s Decision on Demirtaş

One of the most important signs that Turkey has moved away from civil liberties in 2021 is the disregard of international standards by Turkish authorities and courts. In its decision announced on 22 December 2020, the Grand Chamber of the European Court of Human Rights, composed of 17 judges, examined the complaints of HDP ex-co-chairman Selahattin Demirtaş about his detention and concluded that many articles of the Convention were violated. Demirtaş’s right to freedom and security (art. 5/1, 5/3), freedom of expression (art. 10), right to vote and be elected (P1-3) were violated. The decision of the ECHR mirrors the functioning of the law and the judiciary in Turkey and identifies many problems. First of all, it found that although the vast majority of the accusations against Demirtaş were related to his political speeches, Demirtaş’s complaints that these speeches were within the scope of legislative immunity were not examined by any court, including the Constitutional Court. Stating that the lifting of immunities with a personal (ad hominem) constitutional amendment is unpredictable, the ECHR also determined that Article 314 of the Turkish Penal Code, which regulates the crime of being a member of a terrorist organization, was also unpredictable, and decided that the interference with the freedom of expression lacked any legal basis. Deciding that there is no reasonable suspicion of guilt

to justify the arrest, the court made

determinations that would affect many judgments in similar situations. It held that Demirtaş’s right to be elected as an opposition party leader had been violated due to his inability to participate in legislative work due to his unlawful detention. In addition, considering Demirtaş’s political position, the absence of reasons to justify his detention, the lack of legal grounds for judicial decisions, the great parallels between the President’s speeches and judicial decisions, and the fact that the HSK was under the control of the executive, the Court ruled that the detention had a political purpose. Therefore, it decided immediate release of Demirtaş. The decision is final and there is no possibility of appeal. The decision points to very important structural problems in the legal system, especially the structure of the HSK and the independence of the judiciary. Failure to implement the decision seems to cause significant problems in Turkey’s relations with the Council of Europe. Despite this, both the President, the Minister of Interior, and the leader of the MHP, Devlet Bahçeli, declared that they would not recognize the decision and would not implement it. The detention of Demirtaş and Kavala continues.



## DISPROPORTIONATE VIOLENCE BY LAW ENFORCEMENT

In Turkey in 2021, when police violence has almost started to normalize, Boğaziçi University students and lecturers continue to protest President Erdoğan's appointment of rector, ignoring internal practices and elections of the university. The protests, which have been going on for about a month and a half, are still at the center of the political agenda, and the ruling and opposition bloc is divided on the axis of these protests. Opposition parties and non-governmental organizations are calling for Mr. Bulu, an appointed rector by the government, to resign, stating that the appointment method is wrong. Appointments of rectors with partisan motives, regardless of academic competence, make universities objects of political engagement. Undoubtedly, the government can "take over" Boğaziçi University and other academic institutions it deems hostile, thanks to its patronage relations, but this can only happen at the expense of academic efficiency and freedom and Turkey's human capital. By ignoring this, the government, on the other hand, suppresses peaceful protests with disproportionate force, causing severe damage to the already eroded civil rights and freedoms.



## CASES OF 'INSULTING THE PRESIDENT' CRIME AND THE SUPPRESSION OF THE FREEDOM OF EXPRESSION

The President exerts his influence over the judiciary to intimidate the opposition with non-pecuniary damage lawsuit and social media users with the threat of imprisonment. On December 21, President Erdoğan filed a non-pecuniary damage lawsuit of 250 thousand Lira against Özgür Özel, the CHP's group deputy chairman and Manisa MP, on the ground that Mr. Özel labeled the President a "dictator". The president's lawyer, Hüseyin Aydın, claimed that Özel had "made, with the intention of attacking the President's personal rights, outright insults against him that are in violation of his personal rights, ". Likewise, Erdoğan had filed a non-pecuniary damage lawsuit of 500 thousand Lira against the CHP's leader, Kemal Kılıçdaroğlu, following his statement targeting the President "were you not the Prime Minister who cooperated with FETO and plot against the army?" President Erdoğan does not only sue his opponents with whom he happen to have political controversies; but he also does so for social media users,

who criticize and denounce him. At the moment, thousands of people have been sentenced to prison, and are currently on trial for the crime of "insulting the President". These cases are based on the article no. 299 of the TCK. The crime of insulting the president, which entered the TCK in 1961, is still in effect, though some changes have been made since then. The article no. 299 of the TCK imposes one up to four years of prison sentence. However, contrary to the fact that the cases filed against the crime of insulting the president were relatively few in the past, and were exceptional, they became rather systematic during Erdoğan's rule. A case in point is that while the previous presidents filed lawsuits for the crime of insulting the president for average of several hundred people during their seven years of presidency, the numbers hit all-time high since Erdoğan's first year in office in 2014: 40 people in 2014, 238 people in 2015, 884 people in 2016, 2, 099 people in 2017, and finally 2, 462 people in 2018 were convicted. In 2019, 36, 066 people were prosecuted and 12, 298 people were put on trial, and 3, 831 of them were convicted.

## New Restriction Signal from the Government on Social Media

It is understood that with the new regulation, which will be brought to the agenda in October 2021 after the opening of the parliament, new restrictions on the use of social media are foreseen. In his statements to the Hürriyet Newspaper, AKP Deputy and Constitutional Commission Deputy Chairman Ali Özkaya stated that research is being carried out for a new legal regulation and that social media users who spread disinformation on social media can be punished from one to five years and banned from using social media for a while. The new limitation on social media raises the concerns that the government aims to keep social media under control in the election atmosphere.



## RESTRICTIONS ON LIQUOR SALES IN EXCUSE OF THE PANDEMIC

The government's ban on sales of liquor by administrative decisions lacking a legal basis was recorded as one of the biggest blows to civil liberties. In addition, attempts by law enforcement officers to impose fines on places that sell liquor may be considered within the scope of unlawful orders. In addition, prohibiting the sale of liquor completely, even by law, would be contrary to the "principle of proportionality" and Article 13 of the Constitution. On the other hand, the government's complete ban on the sale of liquor without satisfactorily answering the question of how effective it will be in the fight against the pandemic, together with the heavy taxes and measures imposed on alcoholic products in recent years, causes a legitimate concern of "intervention in the lifestyle" in the public.

### MHP Leader Devlet Bahçeli Threatens Ankara Metropolitan Mayor Mansur Yavaş

During the commemoration ceremony organized by the Alparslan Türkeş Foundation on Sunday, November 28, a group of 50 people stormed the hall and attacked many people at the ceremony. It was claimed that although the police were at the entrance of the hall where the attack took place, they did not prevent the attackers and ignored them. It should be noted that no investigation was opened on this issue after the attack took place. While the expectation in the public was that Devlet Bahçeli made a statement to condemn this attack and punish those responsible, Bahçeli made statements that would fuel violence, aside from the call for calm. It is not possible to see what Devlet Bahçeli said about Yavaş as an ordinary daily polemic, especially when we consider that the attacks against politicians have increased in recent years and that the government and its allies have encouraged violence, let alone disapproving it. The fact that political polarization has come to the point where leaders threaten each other poses a great threat to Turkish democracy.

### LGBT & "Pride Parade" and the Right to Peaceful Demonstration

The 2021 "Pride Month" celebrations in Turkey came to an end with the "Pride parade" held on 26 June. In this context, the increasing number of activities have been faced with the governorship's obstructions and violent police interventions for the last 6 years. The LGBT+ Pride Picnic, which was held within the same scope this year, was banned by the Istanbul-Şişli District Governor's Office, and those who came together for the picnic faced severe police intervention. During the intervention, one person's arm was broken and another person was detained. The parade, which is the highest participation event of the Month of Pride, was banned this year with a decision taken

by the Governorship of Istanbul the day before. The governor's office declared that the march would not be allowed on the grounds of the ban, on the grounds of protecting general health and morals, and preventing provocative actions and events. While the administration's decisions prohibiting the use of the right directly without reminding the responsibilities of the state during the use of a right, the disproportionate police violence against demonstrators and journalists, and the increasing arbitrary arrests, the freedom of expression, freedom of assembly and association, and the right to information increase human rights violations, while deepening Turkey's rule of law crisis.

### Constitutional Court Decision of Lack of Personal-Matter Jurisdiction in Kaos GL Application

On November 18, 2017, the Ankara Governor's Office decided to ban the activities of some non-governmental organizations, including Kaos GL. The decision of the governor's office was based on the justification that "it will openly incite a section of the people with different characteristics in terms of social class, race, religion, sect or region to hatred and enmity against another section". KAOS GL association made an individual application to the Constitutional Court in 2018, following the rejection of the annulment lawsuits filed later. On February 21, 2019, the Ankara Regional Administrative Court canceled the administrative action. At the end of this long process, in September 2021, the Constitutional Court examined the application of the association and gave a decision of lack of jurisdiction in terms of person. The Constitutional Court asserts that the Association was not materially affected by the ban decision. However, the Association did not engage in any activity for about two years

after the Ankara Governor's ban. How is it possible that the Association, whose activities are banned and therefore cannot attend any meetings or demonstrations, is not affected concretely? The Constitutional Court states that since the Regional Administrative Court canceled the administrative action, the grievances disappeared, and therefore it gave a decision of lack of jurisdiction in terms of person. Well, in this case, how can we explain the grievance experienced over the past two years? As a matter of fact, there is no provision in the decision of the Regional Administrative Court to remedy the two-year violation of rights. If we accept that the annulment of the administrative action eliminates the violation of rights, this situation will turn into a systematic treatment in which the administration constantly violates rights and the victims are worn out during long litigation processes and at the end of the day they are deprived of their fundamental rights.



## 30 DETAINED FROM THE "WE CANNOT FIND SHELTER MOVEMENT"

Students are among the segment that hit hardest by the economic crisis. Especially in big cities, the increase in rent prices leaves many students facing the problem of accommodation. In addition to the high cost of living, many students cannot meet their accommodation needs due to the insufficient state dormitories. Criticizing the government's ineffective policies, the "We Cannot Find Shelter Movement" has tried to raise the issue of housing through various methods over the past year. However, many demonstration marches organized by the Movement faced administrative obstacles and disproportionate violence by law enforcement. Especially in recent years, we see that the government spends more time targeting people who voice their problems and try to set the agenda, rather than taking a comprehensive approach to solving existing problems. The fact that the government sees the protests organized by the Movement as a threat to its own existence, instead of seeing it as a manifestation of the housing problem, shows how detached it is from reality and how ruthlessly it can treat communities that it sees as a threat.

## Ministry of Interior Launches Special Inspection on Istanbul Metropolitan Municipality

The AKP government, which lost many metropolitan and district municipalities in the 31 March 2019 local elections, started targeting the municipalities won by the opposition parties. The government, which appoints trustees to hundreds of municipalities won by HDP, continues to put pressure on CHP municipalities through various means. It exhibits a repressive attitude towards opposition municipalities ranging from creating administrative difficulties to limiting resources, from preventing mutual aid projects to media campaigns. Finally, the Ministry of Interior announced in a statement published on its social media account that a special inspection was launched to investigate the allegations that Istanbul Metropolitan Municipality (İBB) personnel were involved in terrorist organizations.

In his statement, İBB President Ekrem İmamoğlu said that for recruitment in the municipality, a criminal record from the Ministry of Justice is requested, so people whose guilt has been determined by the court are not admitted to the İBB. Stating that Soyulu made this claim two weeks ago, Ekrem İmamoğlu wrote to the ministry and said that it is necessary to share who these people are, adding that the Ministry of Interior did not receive any explanation on the subject. It is clear that the allegations of recruiting people affiliated with terrorism in İBB are aimed at targeting İBB President İmamoğlu, who is a potential candidate before the upcoming Presidential Elections.

## President Erdoğan does not Recognize the Decisions Taken by the ECHR Regarding Kavala and Demirtaş

One of the most important cases showing the erosion of the rule of law and judicial independence in Turkey is the case of Osman Kavala. Osman Kavala, whose rights have been found to be violated by the European Court of Human Rights, is still on trial. All along, government officials, especially the President, have been putting pressure on the courts to continue Kavala's detention. Despite pressure from non-governmental organizations, the Council of Europe and other countries, the government is not willing to end Kavala's detention. So much so that President Erdogan said that at the end of October, he had ordered the ambassadors of 10 countries that called for Kavala's release to be declared "persona non grata". Thereupon, on 1 December, the Committee of Ministers of the Council of Europe started a violation procedure for Turkey, which did not comply with the ECHR decision, on the grounds that it did not fulfill its obligations in Article 46 of the ECHR. Although it is not clear what kind of sanctions Turkey will face as a result of the violation procedure of the Committee of Ministers, it should be noted that Turkey is faced with measures such as expulsion from the Council of Europe membership or suspension of voting rights.

## Conclusion

The effects of the aftershocks on civil liberties seem to continue for a long time. It is possible to see how the police state is put into effect, where journalists, non-governmental organizations, representatives of institutions and organizations, and even citizens who express their opinions are repressed dramatically. The practices of the State of Emergency, which threaten fundamental human rights, on the one hand, narrows the space of freedoms. On the other hand, it leaves Turkey in a difficult situation in the international arena. Turkey, where

it is possible to observe situations where fundamental rights such as freedom of assembly and demonstration, freedom of association and freedom of expression are violated, has dragged it into a deep crisis that is almost impossible to get out of. The ongoing indefinite bans on the freedom of assembly and demonstration, the stigma placed on opponent civil society actors, police brutality, judicial harassment of peaceful demonstrators, serious restrictions on the freedom of assembly and demonstration create

grievances that concern almost all layers of society.

Although the consequences of the above-mentioned events occurred in 2020 and 2021, it would not be wrong to state that their causes are much deeper. Many non-governmental organizations and international organizations state that this decline started with the 2013 Gezi period, and some see it as accidents that occurred in the dark tunnel entered with the 2016 coup attempt. The complete disregard for constitutional obligations and international commitments in Turkey has a negative impact not only on civil lib-

erties, but also on law, democracy, governance, economy, investment and many more. In all this negative picture, the recipe that needs to be applied is possible only by returning to the international democracy standards, law, and democracy as soon as possible. The fact that a country is strong and reliable in the legal sense, and that institutions and organizations are built and regulated on the basis of democracy are among the sine qua non of positive developments that may arise in political, social, and economic terms. As can be seen, many old and new issues regarding civil liberties in Turkey await solutions.

# ECONOMIC LIBERTIES

## Introduction

The global economy suffered a tremendous production loss in 2020, with the effect of the mandatory measures due to the Covid-19 outbreak. Turkey has experienced and continues to experience an unprecedented recession in the economy in recent years, both due to the effects of these global factors and its governance of the economy. In addition, when undemocratic practices that had profound effects on law, democracy, civil society, and civil liberties were added, the issue of economic freedoms in Turkey became one of the most important issues on the agenda. With this crisis experienced all over the world, in the first half of 2020, the GDP in some developed countries decreased by more than 20 percent. Although Turkey has gained a positive momentum in its growth figures, it has been in an economic crisis for the last two years, the traces of which cannot be easily erased, due to complications such as interest rates, exchange rates, inflation, unemployment, the crises experienced by the central

bank, and the negative economic policies of the government.

It would be insufficient to read these crises only in terms of economic dynamics and may lead to difficulties in analyzing them. For this reason, it should be stated that the problems experienced in law, democracy and civil liberties in Turkey naturally lead to the narrowing of the field of economic freedom. Since economic freedoms are an important determinant of freedom in general along with political and civil liberties, it would not be appropriate to separate these factors from each other. The concept of economic freedom can be regarded as an important determinant of economic efficiency, growth, and welfare. In this context, when Turkey's policies are evaluated, Turkey is caught between the exchange rate and inflation dilemma, as we have stated in our previous reports. Its political and civil rights have been shelved to a certain extent and it has an approach that separates democratic norms and

rules from economic development and economic freedoms.

In order to make the definitions correctly, it may be useful to mention the concept of economic freedom. The basic elements of economic freedom are individuals' free choices, private property rights, and freedom of exchange over their possessions. It can be summarized as the citizen's free economic activities and the right to economic entrepreneurship. In short, economic freedom means that individuals can freely carry out their economic activities as they wish and freely use the values they have obtained as a result of their activities without any outside interference. At this point, the duty of the state and institutions can be stated as being responsible for providing this environment and creating the necessary economic infrastructure within the framework of democratic norms and rules. It may be valuable to take a look at the specific developments, facts, and perspectives that Turkey has expe-

rienced, especially in the context of economic freedoms recently.

In this process, we discussed the developments in Turkey in the context of economic freedoms, under the title of "economic liberties", which is the third title of the "Freedom Observer" bulletins. According to the Economic Freedom: 2021 Annual Report by the Fraser Institute, in the "Economic Freedom Index" of the year, in which 165 countries are compared, Turkey ranked 100th with a score of 6.69 in 2018, while in 2019 it was ranked 114th with a score of 6.54. This year, it ranked 76th out of 178 countries in the economic freedom rankings published annually by the Heritage Foundation-based think-tank Heritage Foundation and the Wall Street Journal. This situation has deteriorated even further in 2020 and 2021. It is, indeed, important to analyze the recent events in fine-grained manner and keep the readers up-to-date in order to create institutions and organizations that are compatible with the spirit and structure of economic freedoms.



## THE NEW ECONOMY PLAN

The Minister of Treasury and Finance, Berat Albayrak, announced the "New Economy Plan" (NEP) for the period between 2021 and 2023 on September 29th. Economists, however, criticized the NEP for its inherent contradictions. Soon after the announcement of the program, appreciation of Dollar and Euro against TL was interpreted as a clear signal of lack of trust of markets towards the NEP. In return, Minister Albayrak's statement "I do not mind exchange rate at all" drew harsh reaction. It appears that Minister Albayrak prefers to focus on increase in production and export levels rather than decrease in prosperity. This clearly indicates that the government opts for China-influenced developmental strategy. However, it is less likely to achieve success by following such a developmental strategy as Turkey bears no resemblance with China in terms of economy of scale and low levels of domestic demand. However, these aims are found to be rather unrealistic in a country, where low level of domestic savings needs to be financed through high levels of foreign financing, that ultimately weakens the trust of economists and citizens to the economy management.

## Boycott of French Goods

After the death of Samuel Paty, who was killed by beheading after his lecture on freedom of expression discussed through the caricatures of Muhammad, on October 16th in France, the French Police initiated a series of operations. Revealing his discomfort by the operations of the French Police, Erdogan called for public boycott of French goods. The call for a boycott of French-made goods had already been made by other Islamic countries. France, however, did not make a similar call for a boycott of Turkish goods; on the contrary, French Minister Delegate for Foreign Trade and Economic Attractiveness, Franck Riester, stated that the French government will not retaliate against the call for a boycott of French goods by Turkey. Yet, there are still calls for a boycott of French goods made by Arab countries and Turkey. According to TUIK data, France was the seventh top exporting country of Turkey during the period between January and August in 2020. This ratio accounts for 4.1% of total export of Turkey. In the same period, Turkey's import from France was around 3,894 billion dollars. The total trade volume of the two countries is around 8.1 billion dollars. This was an important factor that caused the Turkish currency to depreciate against the Euro.

## The Case of Halkbank

The case of Halkbank, started by the arrest of Reza Zarrab in the U.S. on March 16th, a key player of the December 17-25 Corruption Investigation in 2013 (later turned out to be initiated by the religious Gulenists sect holding major positions in politics and bureaucracy), continues. Zarrab was arrested on the allegations of defrauding of the U.S., violating International Emergency Economic Power Act that regulates the U.S. sanctions on Iran, deceiving banks and money laundering. During both prosecutorial investigation and court hearing, Zarrab, in cooperation with the prosecution's office, confessed that Halkbank performed a critical role in the whole corruption process.

As a result of Zarrab's accusations, then the deputy general manager of Halkbank, Hakan Atilla, was arrested at the JFK airport in New York in March 2017 over the allegation of violating the U.S. sanctions on Iran. Founded partly guilty over this allegation, Hakan Atilla was sentenced to 32 months in prison, which he served 28 months of it. Although Hakan Atilla was released from the prison, the case is still on. It is apparent that the case of Halkbank will continue to bother Turkey.

## STORM IN TURKISH ECONOMY

Another reason for the fluctuation of the Turkish economy was the crises experienced at the institutional level. At a time when stability was very important, the rapid change of the central bank caused serious concerns in the markets. First, the President of the Central Bank of the Republic of Turkey, Murat Uysal, was dismissed on 7 November 2020, that is, on Friday, the day when the markets were closed, at 02.00 am. Naci Ağbal, who had previously served as the Minister of Finance, was appointed to the post vacant from Uysal. With the dismissal of Murat Uysal, no central bank governor has been dismissed before completing his term since the Presidential Government System came into force. While the echoes of all this continued, Berat Albayrak resigned from his duty as the Ministry of Treasury and Finance on Saturday, November 8, 2020, at around 19.00. The government, which remained silent for a long time about Albayrak's resignation, announced that his resignation was accepted exactly 27 hours after his resignation. No major media channel could report Albayrak's resignation. So much so that, during all these hours, most of the people did not learn the news of the resignation. The news of Berat Albayrak's resignation was welcomed by the market, as he represents the economic pillar of the mismanagement, and the USD/TRY rate dropped to 8.36 from 8.52. After all this happened, Lütfü Elvan, a former bureaucrat, and a minister before, was appointed as the Minister of Treasury and Finance. After a few busy days, the earthquake in the Turkish economy calmed down a bit and everyone focused on the interest rate decision that the CBRT will announce at the next Monetary Policy Committee. Finally, the CBRT announced its interest rate decision on 19 November 2020. For a long time, Turkey was facing an intense increase in exchange rates due to the low interest rate policy accompanying its structural problems. The volatility in exchange rates calmed down when the Central Bank increased the weekly repo rate, called the policy rate, from 10.25 percent to 15.00 percent. This increase in interest can actually be called a simplification. Because the weighted average cost of funding of the CBRT was around 14.70%. As a matter of fact, although the market found this positive, it did not perceive it as a tightening and the effect of this decision on exchange rates was limited. The dollar rate, which was around 7.70 on the morning of November 19, could only fall to around 7.52 and returned to 7.60 levels during the day. However, the fact that the heads of the centers continued to change and the institutions and bureaucrats lost their credibility were the factors that led to the rise of the dollar.

## Suspicion Over Manipulation of Turkish Inflation Data

Turkish Statistical Institute (TURKSTAT) announced the results of the Consumer Price Index for the month of November on December 3rd. Inflation in Turkey is measured through this index. Together with the data of the month of November, annual inflation in Turkey was 14,03 percent. Inflation data are followed very carefully, especially in Turkey. Because, among economists and the public, there is an impression that real inflation is covered up by the official authorities. The principal reason behind that impression is Turkey's interest rate policy.

Erdogan's alleged pressure on the Central Bank not to increase policy rates indirectly causes inflation to be suppressed. Because if the policy interest rate is lower than inflation, the interest income becomes negative and the residents in Turkey moves out of TL assets and deposits in favour of foreign currency denominated assets and deposits. The number of people who believe that the data has been manipulated to avoid this uproar is quite high. On the other hand, even all this could not prevent residents in Turkey from turning to instruments such as dollars, etc., which means that even though the inflation data was manipulated, it did not work at all, because market dynamics allow investors to receive information not only from government agencies, but also from different initiatives. Although alternative inflation calculations and data mining procedures are carried out to overcome this situation, the manipulation of government agencies continues to have market-disrupting effects.

## What Does Unemployment Actually Mean?

Unemployment data reveals a problem not only for democracy, but also about confidence in the market and public authority. While the manipulation of inflation data often points to a more implicit situation, a much more fundamental problem, namely a definition problem arises in the announcement of the unemployment data. Here we come across the problem of methodology. Essentially, the source of this problem is not Turkey. The same method of calculating unemployment rate is used in many places. Therefore, unemployment data can be quite misleading. But countries like Turkey tend to use it as an advantage. These unemployment rates, which do not reflect reality, can find their place in the government's statements. However, the picture that appears in the latest unemployment data is quite dire.

To be exact, according to September 2020 data (these are the latest data), only 50,5 percent of people who are able to work in Turkey, join the workforce. The unemployment rate only covers those who join the workforce and cannot find a job. However, the broad definition of unemployment includes the people who are excluded from labor force statistics because they do not look for a job since they give up hope. But government or any public figure close to the government is not talking about it. In a democratic country, state institutions are responsible for providing accurate, timely and complete information to the public. Incomplete, if not wrong, reflection of unemployment data in public debates confronts us as one of the threats to democracy.



## INFLATION AND WELFARE LOSS

TurkStat announced both producer and consumer inflation figures, Producer Price Index (PPI) and Consumer Price Index (CPI) on May 3, 2021. According to TURKSTAT, the CPI for April 2021 increased by 17.14 percent compared to the same month of the previous year, while the increase was 1.68% compared to the previous month. The most striking factor in consumer inflation was health expenditures. When the inflation experienced by the citizens for health expenses is calculated according to the same month of the previous year, it was recorded as 18.27 percent. It seems that the price increase of health products and services during the pandemic period will push people's budgets even more. In PPI, on the other hand, much more serious increases were observed. Producer inflation increased by 35.17 percent compared to the same month of the previous year, while the rate of increase was 4.34 percent compared to the previous month. There were two items that should be considered in the increase in producer inflation. In this period, the annual increase in energy prices was 38.64 percent, while the annual increase in intermediate goods prices was exactly 42.59 percent. As seen in producer prices, many of the products and services used by the sectors for production have experienced huge increases in the past year. One of the most important reasons for these increases is the exchange rate shock experienced by Turkey. Although it seems that only producer inflation has increased at the moment, its effects on the consumer will be seen in a very short time. The appreciation of foreign currencies against the Turkish lira continues to cause problems in the supply of imported products to consumers.



## THE FATE OF 128 BILLION DOLLARS

One of the most important issues that have been on the agenda lately has been the fate of 128 billion dollars. The leader of the Republican People's Party (CHP) Kemal Kılıçdaroğlu, in his speech at the group meeting in the Assembly, started a political campaign based on the question of where the 128 billion dollars' worth of foreign currency, which had been depleted from the reserves of the Central Bank of the Republic of Turkey (CBRT), is. This campaign, which argues that foreign exchange reserves are melted through privileged sales outside of market prices, had a great impact on the public. Other opposition parties began to question the fate of \$128 billion and invite the government to make a credible explanation. The İYİ Party asked whether there was a political directive in the CBRT's decision to sell its foreign exchange reserves. DEVA Party Chairman Ali Babacan stated that the CBRT's reserves were melted in violation of the free exchange rate regime and a serious violation of the rules was made. Opposition parties also claim that the reports that came to the Parliament last week were sent by the government to intimidate the opposition. The discussion about the fate of foreign exchange reserves first started in November 2020, after the resignation of Treasury and Finance Minister Berat Albayrak. Later, the Reuters news agency claimed that the investigation into foreign exchange sales, which caused a loss of approximately 130 billion dollars in reserves as of 2019, played a role in the dismissal of Naci Ağbal, who was the Chairman of the Central Bank at the time of Albayrak's resignation, in March 2021. This debate has come up again. The government wing has not yet been able to give a satisfactory answer to the questions about the fate of 128 billion people, which came to the agenda again with the campaign launched by the CHP. In democracies, it is not a natural phenomenon for opposition parties to ask the government where and for what purpose material resources are used. In recent years, dismissals and appointments made with political motivations have severely damaged the independence of the Central Bank and caused it to turn into an institution whose data are approached with suspicion. In this context, the lack of a detailed and convincing response from the government or the Central Bank regarding the fate of \$128 billion supports the idea that there is justification in the claims of the opposition.

## Possible Budget Deficit in 2020 and Tax Increases

Turkey had a budget deficit of 172.7 billion TL in 2020. December 2020 budget deficit was announced as 40.7 billion TL. However, the budget deficit was realized as only 18.4 billion TL in 2013. By 2020, the deficit in the last month of the year was more than double the deficit in 2013. In addition to these, Turkey had a primary surplus during the periods when it maintained fiscal discipline. In other words, when you subtract the interest expenses from the budget deficit, we actually saw that the budget had a surplus. This allowed Turkey to borrow more sustainably. This whole process has been reversed for several years. In 2020, Turkey did not have a primary surplus, and it had a primary deficit of 35.8 billion TL, and this figure amounted to 35.8 billion TL. Unfortunately, this means a higher risk premium and borrowing with higher interest rates for the Turkish economy, and its effects still continue. According to these statistics, it seems that Turkey will have to grapple with a growing budget deficit. As a result of these, the possibility of increasing taxes, which is the main income item of the budget, may be considered high for 2021. In countries like Turkey, where indirect taxes are high, increasing taxes is not only a financial regulation. Increasing taxes causes the welfare of wage workers, who have to spend their entire income, to decrease, and this segment of society faces more difficulties in voicing democratic demands, causing them to have to deal with more problems.

## Why is Turkey Cheap?

The Turkish Statistical Institute (TUIK) announced 'the 2020 consumption goods and services price level index' of Turkey based on EuroStat data on 22 June 2021. According to the statement, Turkey's index value is 38. What this means is also explained in the bulletin prepared by TURKSTAT as follows: The price level index is an indicator of the purchasing power of the national currencies of the countries in comparison with the exchange rate. If the price level index of a country is greater than 100, this country is expressed as "expensive" compared to the country group average, and if it is less than 100, this country is expressed as "cheap" compared to the country group average. With an index value of 38, Turkey comes across as a very cheap country compared to EU countries. When compared, the highest index value among 37 countries belongs to Switzerland and this value is 170. This means that you can consume goods and services for only 38 Euros in Turkey with 170 Euros spent in Switzerland. Turkey has become a cheaper country year by year, but the tremendous decline in the Turkish lira in 2018 and 2019 was the most important factor that made Turkey cheaper. Unfortunately, it is a fact that Turkey will not be able to get out of this deadlock until it reaches an optimum exchange and growth rate.

# IS TURKEY'S ECONOMY REALLY GROWING?

TURKSTAT announced the Economic Confidence Index data on May 28, 2021. This index consists of 5 sub-indices. These sub-confidence indices and their weights are as follows: Consumer, 20 percent; Real Sector, 40 percent; Service Sector, 30 percent; Retail Trade, 5 percent; Construction Sector, 5 percent. As can be seen, the real sector, namely the manufacturing industry and the service sector, has a significant impact on the general economic confidence. According to the announced data, the Economic Confidence Index decreased by 1.3 percent in May compared to the previous month, from 93.9 to 92.6. The remarkable point in this index is that consumer confidence is still very low and unfortunately continues to decline. According to the data, consumer confidence decreased by 3.6 percent compared to the previous month. In addition to these, according to the growth data announced on May 31, 2021, it is seen that the Turkish economy grew by 7 percent in the first quarter covering January-February-March 2021 compared to the same period of the previous year. So, why were we able to grow so much while economic confidence fell so much? Actually, this question is basically "Is this growth real growth?" same question as we are faced with an increase in inflation that accompanies economic growth. Annual consumer inflation in April was around 17 percent. However, the increase in the Domestic Producer Price Index, in other words, the annual increase in the cost of the industrial producer was 35.17 percent. In addition, according to the data announced on May 28, 2021, the annual increase in the Service Producer Price Index was 26.26 percent. In particular, the continuation of the increase in inflation completely eliminates the effect of the increase in welfare arising from growth. When we look at the general picture, we see that the industrial sector experienced an increase in exports due to the depreciation of the Turkish lira against the US dollar. This, of course, contributes to the growth of the economy. However, it should be noted that it is getting more and more difficult for the domestic consumer to purchase these domestically produced goods. As such, the increase in welfare from economic growth only leads to an improvement in the economic conditions of a certain segment. The fact that the increase in welfare cannot spread to the general population shows itself both in consumer confidence and in the spending composition of citizens. The increase in production due to the low exchange rate does not actually increase our welfare. However, in a democratic country there should be a more predictable and continuous growth rather than high-speed fluctuations in the economy.

## What is the Reason Behind Stockpiling: The Government?

After the Presidential Cabinet meeting on 08.12.2021, Erdoğan made quite important statements. These statements are regarded by market actors as important to determine the direction the market will take. In the new government system, no public institution officials or minister can make statements about their own fields without Erdoğan's knowledge. After the cabinet meeting, Erdoğan made evaluations in wide range issues from foreign relations to defense, from domestic politics to economy. From the statements made, Erdoğan touched upon the issue of stockpiling and warned those "who makes an increase in prices that cannot be explained by the input costs and the increase in the exchange rate will be shown no mercy." However, the President blamed only the producer and trader. The rationale the President seemed to be convinced of follows the logic that by not selling the goods in their hands, that is, by holding stock, the sellers create a shortage of goods in the market and cause the prices to increase. However, according to the figures announced by the Turkish Statistical Institute (TÜİK), the Producer Price Index, that is, producer inflation, which was 4.26 percent in November 2019, was announced as 54.62 percent in November 2021. It is obvious that this problem is not caused by the producers and sellers. At the root of the problem lies the economic policies that the government is implementing. No one can be forced to sell cheap products at the expense of their capital by the state. This is not a free market, not even a command economy; this would only be an autocratic economic administration. What will solve this problem is not police measures and threats, but an economic policy formed and implemented in market conditions.

## A New Possibility of Credit Expansion

On July 8, 2021, Reuters reported on the government's plans to provide capital support to public banks for a new credit expansion. The government, which used an inefficient and short-term method in the form of credit expansion as a pandemic measure last year, was expected to use the credit expansion this time as a step to stimulate the market before the early elections.

Last year, the government transferred resources of 21 billion Turkish liras to the banks that gave loans with negative real interest rates by public banks. On the other hand, there is another reason for the need to increase the equity of public banks: bad loans. Turkey, contrary to all Basel standards, has extended the follow-up period for non-performing loans due to the pandemic. In other words, loans that are very likely to be bad, do not appear as toxic assets on bank balance sheets yet. If these are reflected in the balance sheets, the lack of equity will have started. Well, the question of whether Turkey can handle a new credit expansion has an important place here. All these movements to stimulate the market are being made to provide some relief before the elections. But their effect is very temporary. Because there is no return for the credit created. The continuous expansion in Turkish lira brings with it an increase in foreign exchange. In addition, since the credit distribution mechanism is not fair, many large loans are refinanced, but the loans used by the wage earners are in no way re-evaluated.

## Minimum Wage Increase and the Risk of Deterioration in the Price Mechanism

After the CBRT Monetary Policy Committee meeting, Erdoğan announced that the minimum wage was increased by more than 50 percent. Turkey is a country where the minimum wage is widely misunderstood. About 55 percent of wage earners work for the minimum wage and the minimum wage is constantly approaching the average wage. However, after the announcement of the minimum wage, it was heard that many small-sized enterprises would lay off workers.

It seems that this process will result in the spread of informal work. If the employer lays off workers, unemployment will increase. If informal work becomes widespread, the revenues of the Treasury, which is already in hot water, will decrease. It has already been announced that no income tax will be collected from the minimum wage earners, and that even this has brought an additional burden to the budget. On the other hand, if state subsidy is provided, there will be a burden on the Treasury yet again. Within the framework of the government's new economy model, there is another way to both reduce the value of TL and finance all this cost. The government could issue domestic debt securities. In this case, the Central Bank will print money and fund the banks. Banks will also fund the Treasury with domestic debt instruments. However, if this method is applied, inflation can hike up to dramatic levels.



## A STORMY YEAR FOR TURKISH LIRA

The US dollar, which was around 7.35 TL at the beginning of the year, is currently around 13.65 TL. Already at the beginning of the year, the dollar had increased excessively. The economy faced a much severe crisis than what happened after President Erdoğan's son-in-law Berat Albayrak was appointed as the Minister of Treasury and Finance. In the 14 months that have passed since these bulletins began to be written, the Turkish economy has been subjected to two exchange rate shocks. A developing economy like Turkey with a high current account deficit and FX-denominated private indebt-

ness has suffered from these two major crises in such a short time. During Berat Albayrak's term, an erratic interest rate policy was followed. First of all, the policy rate ceased to be a tool to stabilize exchange rate. Secondly, the Central Bank began to fund the markets through another tool called the 'late liquidity window'. As a result of this confusion, the dollar hiked to 8.5 TL. In response to sudden jump in the exchange rate, the Central Bank was trying to stabilize exchange rate by selling the dollars in its reserves. However, the public learned by experience that this inefficient move

did not do anything but melt the Central Bank reserves. After the eventful resignation of Berat Albayrak, Naci Ağbal, who was relatively a reliable figure, was appointed as the Governor of the Central Bank and Lütfi Elvan was appointed as the Minister of Treasury and Finance. As a result of the short-term prescriptions of these two, the dollar, which was close to 8.5 TL, quickly declined to 7.3 TL. Indeed, since these prescriptions included interest rate hikes and required various monetary and fiscal tightening, they also caused concerns in which monetary and fiscal tightening would cause a slowdown in the economy. After all, Naci Ağbal's

presidency did not last long after all this interest fight and he was dismissed from his duty as the governor of the Central Bank after a period of 4 months. When looking at the statements of current economic actors, it is obvious that the days ahead of the Turkish economy will be highly similar to the management of the economy under the rule of Berat Albayrak. The heads of the economy did what they would have expected to do again and caused to a "home-grown crisis" in the history of the Turkish economy.

## Conclusion

A closer look into the Economic Freedom Index, which is accepted as an indicator of sustainable growth and welfare levels for countries, can reveal how far the Turkish economy faces serious problems. For example, in the 2020 Human Freedom Index report of the US-based think tank CATO Institute, Turkey ranked 119th last year in the Human Freedom Index, which includes 162 countries evaluated in the light of many parameters, from the rule of law to the level of personal well-being.

The government's wrong economic policy based on low interest stands out as the most pressing reason be-

hind dramatic decline in economic freedoms in Turkey. As it is known, after the 2001 crisis, the sole mandate of the monetary policy under the leadership of the independent central bank was to keep the interest rates high, to reduce inflation, and to ensure the flow of foreign currency to the country with the effect of global liquidity abundance. Global liquidity, on the one hand, kept interest rates in a downward trend and kept inflation under control by keeping the Turkish lira valuable against foreign currencies. However, the government's serious interventions in the independence of the central bank as of the 2008 cri-

sis and the dream of Chinese-type growth based on depreciated TL and exports, together with the 2013 Gezi process, form the basis of the economic crisis we are experiencing today. While it is aimed to strengthen the construction-based economy model of the government in the domestic market with low interest rates, on the other hand, it is aimed to increase exports in labor-intensive sectors where employers close to the government are concentrated, with depreciated TL. However, this type of growth lacks added value and causes tech-intensive industries to decline.

Especially during the periods when the FED and the European Central

Bank are going for monetary tightening, the low interest policy on the one hand restricts the inflow of foreign currency, which is at a critical point for the economy of the country, and on the one hand, causes inflation to reach historical levels. What needs to be done is to adopt a technocratic monetary policy, as the government implemented in the first years, and to subject the country's financial and fiscal structure to a series of economic reforms. For this, the central bank should be freed from political influences and become independent again, economic management should strengthen cooperation with international institutions, and abandon the low interest policy.

**CIVIL SOCIETY**

## Introduction

Turkish civil society faced increasing pressure after the coup attempt in 2016, and while many non-governmental organizations were closed down, many of them tried to avoid the increasing pressure by changing the issues they worked on and making more limited campaigns. Threats to the work of non-governmental organizations, which are experiencing administrative and technical difficulties such as the decrease in the number of new members and the resignation of existing members, have increased even more with the law enacted on the last day of 2020.

With the Law No. 7262 on the Prevention of the Proliferation and Financing of Weapons of Mass Destruction, which was published in the Official Gazette on December 31, 2020, the year 2021 frustrated Turkish civil society. Campaigns against this law with the support of non-governmental organizations and international organizations in Turkey were not successful, but the concerns mentioned in these campaigns came true one after the other. While the law was still in the pro-

posal stage, the allegations of the lack of control of non-governmental organizations and support to terrorism were brought to the agenda through the pro-government mainstream media and politicians, and such allegations continued to be voiced by the same individuals and institutions in various ways throughout the year.

Before the Law No. 7262, non-governmental organizations had to regularly report the cooperation they established, the funds they received, their member information, and all bank movements through the DER-BİS system of the General Directorate of Civil Society Relations under the Ministry of Interior. In case of failure in notifications or a problem detected as a result of notifications, NGOs were inspected by the Provincial Directorate of Associations or the Ministry of Interior. However, the relevant law introduced the rule that all non-governmental organizations should be regularly audited at least once every three years. The administrative workload created by this situation and the general belief that the inspections would be car-

ried out for political purposes created a year-long unease on non-governmental organizations. Although the regulations brought by the Law No. 7262 will be discussed in the next sections, the fact that appointing trustees to associations and confiscating their assets has been reduced to a simple administrative process has also started to threaten the existence of non-governmental organizations.

Some of the non-governmental organizations, which have to continue their work by establishing cooperation with different organizations from abroad, have often become the target of pro-government media and social media accounts due to their critical positions on the government's actions. The method of targeting by using allegations of espionage and spying has been carried out regularly for all non-governmental organizations that take a critical position on different issues and has been used as a justification for increasing administrative pressures against non-governmental organizations. Non-governmental organizations, which caused discomfort in the government circles because of their work, were first tar-

geted in the social media and then in the mainstream media, and then audited by the Ministry of Interior.

Audit processes have been experienced in different ways for non-governmental organizations of different political views. While non-governmental organizations that were pro-government or did not take a critical position towards the government, easily circumvented the inspections, or did not come under inspection, many non-governmental organizations that could be deemed to have oppositional views were both subjected to very long and detailed inspections and were inspected twice in the same year.

While all these developments were evaluated as violations of the right to organize and assemble, they also reflected the deep crisis in Turkey's participatory and pluralistic democracy culture, freedom of expression and the rule of law. The experiences of non-governmental organizations as a result of both the Law No. 7262 and the increasing polarization and political pressure are summarized as follows:

## SİVİL TOPLUMA DOKUNMA!

#SivilToplumaSesVer



### FATF RECOMMENDATIONS AND PRESSURES ON NON-GOVERNMENTAL ORGANIZATIONS

Recently, the Draft Law on the "Prevention of the Proliferation and Financing of Weapons of Mass Destruction" was discussed in the Turkish Grand National Assembly and was accepted by the votes of the ruling coalition. The main articles on which the proposal is based are money laundering, the spread of terrorism and weapons of mass destruction and the regulations it proposes to prevent their financing for all countries of the Financial Action Task Force (FATF) within the OECD. If Turkey did not implement the FATF recommendations, there was a possibility that it would enter the Gray List of countries. This would reinforce the current insecurity of the Turkish economy. However, in Turkey, the arrangements proposed by the AKP and MHP drew a strong reaction from the civil society in Turkey. 689 associations and foundations operating in Turkey published a statement titled "Civil Society Cannot Be Silenced" against the regulation, and demonstrations were held in various cities. Within the scope of the law, some administrative measures can now be applied to non-governmental organizations without any legal penalty. In the new regulation, there are measures such as giving the authority to appoint trustees to NGOs to the governors, namely the Ministry of Interior, increasing the frequency of inspections applied to NGOs, dismissing NGO executives only by opening an investigation, and not being a manager of another NGO again. In fact, the confiscation of the property of NGOs is turned into a simple administrative procedure. One of the main problematic aspects of the law is the very broad definition of "terrorism" in Turkey. According to the latest legal regulation, making propaganda for a terrorist organization is considered sufficient by the administration to close-down an NGO. Even "changing the economic order" is considered a terrorist crime according to the Anti-Terror Law No. 3713. All these developments and the last law passed by the parliament, unfortunately, seem to be the steps that will move Turkey further away from democracy. The broad interpretation of the definition of terrorism, the enactment articles that strengthen the government's hand among the FATF proposals, and the absence of any regulation regarding politicians stand out as important evidence of the government's abuse of the aforementioned law.

### The Survey on the Effect of the Law No. 7262 On Non-Profit Organizations

Amnesty International Turkey Office has reported the results of a survey sent to approximately 230 non-profit organizations and interviews with organization representatives on the effects of Law No. 7262. Survey and interview results reveal that although the law has not been fully implemented yet, it has a deterrent effect on civil society. According to the standards of international human rights law, freedom of association does not only include "the ability of individuals or legal entities to form an organization and become a member of an organization; it also includes their ability to request human, material and financial resources from local, foreign and international sources, to receive and use these resources". As is known, states have a positive obligation to facilitate the use of these rights, as well as a negative obligation in the provision of rights and freedoms. Law No. 7262, unfortunately, creates a climate of self-censorship for civil society even before it is fully put into force. In addition to the fact that the vague provisions of the law do not comply with the principle of legality, the lack of certainty of the authority that would carry out the audit is among the criticisms. All of the recently audited organizations noted that the authorities did not share their audit reports with them. As a result, NGOs do not even have an idea about the expectations of the supervisors from them and the concerns of the state. This creates a climate of uncertainty, which results in the fact that the civil society self-restrains itself to avoid punishment. Many NGOs suspended fundraising efforts due to the threat of being accused of supporting "terrorist activities" and removed many executives from their boards of directors who are under prosecution. As a result of the pro-government media's targeting of foreign funders, many NGOs began to approach their international cooperation with serious reservations. For example, the director of a social welfare organization told Amnesty International that the auditors even asked them why a Christian organization supported the organization because the name of an international funding agency they received funding from had the word "Christian" in it.

## **The New Proceedings Are on The Way for NGOs Receiving Funding from the Chrest Foundation**

One year has passed since the Law No. 7262, known as the new civil society law, entry into force. Throughout the year, the pressure, and risks of the law on non-governmental organizations were repeatedly emphasized through various campaigns, surveys, and workshops. However, inspections, fines, fear, and pressure created on non-governmental organizations and their members continued to increase dramatically throughout the year. The psychological pressure of the process of preparing for the inspections, the increasing administrative workload, the decrease in the number of members and dues income, the increasing uneasiness in international cooperation stood out among the problems experienced this year. The fact that some non-governmental organizations will be inspected for the second time in the same year could be well-regarded as an utmost violation of the right to organize. A new pressure knocked on the door at the beginning of December for the NGOs receiving funds from the US Chrest Foundation. The General Directorate of Civil Society Relations, affiliated to the Ministry of Interior, demanded that legal and administrative action be taken against NGOs and their managers on the grounds that 'it violates local legislation'. The discussion of non-governmental organizations receiving funding from the Chrest Foundation came to the fore in the past summer, with the claims that some organizations that support refugee rights on social media received funding from the same institution. Associations, foundations, and media platforms that received funding from the Chrest Foundation were targeted with espionage charges by social media users, newspapers and television channels close to the government as well as nationalist circles. These discussions, which are still ongoing, are hardly to come to an end in a short time. In particular, the Ministry of Interior branded the amount of grants that NGOs received from abroad as elements of crime and announced them in the press release, further exacerbating the government's control on NGOs. Non-governmental organizations, which are deemed to be regarded as 'spies of so-called external forces' in the eyes of the government and demanded to be brought under control with frequent inspections, have been regularly targeted by the pro-government media on different issues and have turned into objects of both political and administrative pressure at the same time.

## **Extending DDK's Audit Authority into Cooperatives, Unions, Partnerships and Affiliates**

Following the Law No. 7262 on the Prevention of Financing the Proliferation of Weapons of Mass Destruction, the State Supervisory Board will now be able to use the "authorities of the supervisory board" of professional organizations, trade unions, publicly beneficial associations, and foundations. Since July 2018, the jurisdiction of the State Supervisory Board continued to be expanded by decrees. According to the decree dated 20 August 2021 published in the Official Gazette, a new one has been added to these authorities. This change caused reactions and debates because of the deepening of state intervention in the sphere of civil society. According to the amendment in the Official Gazette, the phrase "associations and foundations" was previously changed to "associations, foundations, cooperatives, unions and all kinds of partnerships and affiliates of these institutions and organizations" pursuant to Article 2. According to the statement in the next article of the decree, it is foreseen that the DDK, affiliated to the Presidency, can use the powers of the supervisory boards of professional organizations, trade unions, publicly beneficial associations, and foundations. When the Law No. 7262 on the Prevention of the Financing of Weapons of Mass Destruction and the DDK's ability to function as an association's supervisory body are added to the current inspections and political pressures, it has been inevitable that Turkish civil society and participatory democracy culture will suffer greatly. Civil society in Turkey has shrunk and it has become almost impossible for them to survive financially.

## AFTER THE NEW NGO LAW II: LGBT+ ASSOCIATIONS VS. PRO-GOVERNMENT ASSOCIATIONS

Within the scope of the "Monitoring Rule of Law and Democracy in Turkey" project, which continues with the support of Freedom House, we, as Freedom Research Association, planned a series of meetings to record political issues and feelings and to conduct advocacy activities through our Final Reports after one year passed on the "Law No. 7262 on the Prevention of the Proliferation and Financing of Weapons of Mass Destruction". The inspectors who came to the LGBT+ association interviewed at the office for about two weeks. The inspection went on for another a month and a half remotely through asking for information and documents. This, indeed, made these inspections even more controversial. During the audit process, the daily functioning of the association in the office was completely stopped and written photocopies of all the contents of the trainings organized by the association were requested, stating that they should not even be front and back. The association, which did not face any sanctions as a result of the audit, still had to make serious rearrangements in its partnership and member relations. First of all, it was underlined that about 20 members resigned from the membership after the Law and some of the members of the board of directors wanted to resign due to their oppositional content posted on social media. While it was stated that membership applications have decreased rapidly in recent years, it was also stated that the government and the pro-government media's efforts to marginalize LGBT+ associations and portray them as criminals by using so-called pejorative adjectives such as 'LGBT members' caused a serious decrease in membership rates. Believing that they would not be able to get permission for funding campaigns, the association had to stop organizing funding campaigns for LGBT+ people and only confined its activities to share campaign news. Finally, the representative of the association, who stated that the membership fees are very low and they do not have any income-generating activities, stated that one of the biggest losses of this process is withering away of foreign funds and worsening international cooperation. It was stated that after the law, the foreign partners' request for English translation of all kinds of information and documents in the projects and the rejection of the slightest controversial issues jeopardizes solid international cooperation due to political relations. In the meeting, the representative of the association also said, "We are afraid that we will enter a process that will lead to the fact that non-governmental organizations working with groups (LGBT+) whose legitimacy is constantly questioned even today, like us, cannot find any financial resources after the Law No. 7262".



## Conclusion

The Law No. 7262 on the Prevention of the Proliferation and Financing of Weapons of Mass Destruction, which was published in the Official Gazette on 31 December 2020, should be seen as the biggest blow to Turkish civil society in 2021. As a matter of fact, the authoritarian wave that has already engulfed the country since the law came into force has considerably narrowed the field of activity of civil society. Both the frequency of administrative measures and the arbitrariness of inspections, as well as the limitations on international partnerships of civil society, cause serious harm to the civil society, where democracy takes place and flourish. On top of all this, it is possible to see that the Law not only increased authoritarianism in administrative/technical sense, but was also instrumentalized for the conservative cultural hegemony of the government. In particular, the targeting of LGBT+ associations and the inspections they have experienced, the fact that the funds received from a foreign foundation calling itself

Christian have occupied the public debate agenda of the country for days, show that the government has no tolerance for any person or organization other than its conservative imagined communities.

Particularly, in countries like Turkey, which have entered the process of conservative authoritarianism, governments, more often than not, first target liberal civil society and this remind us that civil society is the last bastion of democracy. So much so that, considering that the opposition forces such as political parties, professional organizations,

universities and most importantly the media have worn down, it can be argued that the creative energy of civil society emerged as the strongest opposition channel against the Law in question. As a matter of fact, Turkish civil society justified this view. The report Turkey: Instrumentalizing the Fight Against Terrorism, published by Amnesty International, showed that the main aim is to try to fit civil society into the narrow and oppressive molds of the government, with the very broad interpretation of the scope of terrorism in the relevant Law.