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## THE SITUATION OF FUNDAMENTAL FREEDOMS IN TURKEY

Fundamental freedoms in the discourse of the European Union (EU) mean: freedom of expression, freedom of peaceful assembly, freedom of religion, freedom of belief and freedom of association.

Naturally these freedoms are of utmost importance for Turkey (like any democratic country in the world) not only in the context of its relations with the EU, but for the country itself including its leverage in its region. The significance of the fundamental freedoms for the country can be summarised as follows:

- They are an important constituent of the political criteria they had played a crucial role in the decision of the EU to open the accession negotiations in 2004<sup>2</sup> ;
- In principle they function as the sword of Damocles for the negotiations, as a serious and persistent breach of the fundamental freedoms can in principle result in the suspension of accession negotiations;
- They are also significant for the visa liberalisation process as respecting human rights is an important obligation of Turkey in the visa road map agreed by both Turkey and the EU at the end of 2013;

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<sup>1</sup> <http://www.tepav.org.tr/en/ekibimiz/s/1139/Nilgun+Arisan+Eralp>

<sup>2</sup> Turkey's performance in political criteria was found "sufficiently adequate" before the initiation of accession negotiations.

- They play a meaningful role in Turkey's appeal in its neighbourhood. According to different surveys one of the factors that had made Turkey a source of inspiration in the region in the recent past, was its relative ability to implement the core values driving the Arab awakenings like democracy, human rights, rule of law etc.;

- However most important than all, fundamental rights are crucial for the citizens of Turkey themselves. Science, technology and innovation have been on the agenda of both developed and developing countries over the past few years.

According to the 2014 Transatlantic Trends Survey of German Marshall Fund (GMF) 53 per cent of citizens of Turkey supports Turkey's EU accession. A closer look at the stance of the EU supporters in Turkey shows that, they think there is a backsliding in fundamental freedoms in Turkey, especially in the areas of freedom of expression and media freedom and they regard or rather they want to see EU as a counterbalancing factor against the backsliding in fundamental freedoms in the country.

### **Is there a backsliding in the fundamental freedoms in Turkey?**

Let's try to look at the bright side of the picture first:

There have been some positive developments in the legislative framework related to freedom of expression due to the efforts of particularly the Ministry of Justice and the Ministry of European Affairs.

One of the important outcome of their efforts is the "Action Plan on Prevention of European Convention on Human Rights (ECHR) Violations", adopted by the Council of Ministers which also contains a section on "Enabling Freedom of Expression and Media in the Widest Sense".

New institutions like the Ombudsman Office and Human Rights Institution have been established for the protection of human rights.

New remedies created like the individual application to the Constitutional Court. The Constitutional Court of Turkey, protecting the rule of law and fundamental rights took a number of important decisions. The Court has re-established the conformity with the right to freedom of expression via its decisions against the ban on twitter and youtube, although these bans have reoccurred in recently.

The Democratization package of 2014 lifts restrictions on the use of different languages and dialects in political campaigns and in education in private schools.

Finally, maybe the most positive development has been the decrease of the number of journalists in prison; although there are on-going court cases.

However there have been significant worrying developments that coexist with the aforementioned positive steps.

There is no doubt that Turkey is a democracy, however a contemporary democracy should go beyond being only a ballot box. Hence its quality depends on how freedom of expression is experienced by the citizens and the media. In this sense there is a concern in the society of Turkey, in the EU and in some respected international institutions (International Press Institute, Human Rights Watch etc.) that the achievements of Turkey appear to be at risk in view of some recent developments.

Major areas of unease are freedom of expression, media and freedom of assembly. It is stated that certain laws and the actions of the Turkish Police restrict these freedoms.

Serious obstacles to the full enjoyment of freedom of expression stems in particular from certain provisions of the **Turkish Penal Code, the Anti-Terror Law** and other laws related to the media and the internet, but also from the practice of prosecutors and judges in opening and pursuing cases related to freedom of expression.

A major point of criticism has been article 125 of **Turkish Penal Code**, which criminalizes defamation. It is broadly drafted and has been used widely against journalists and broadcasters.

**Internet Law** is the other law, which is referred to be one of the laws that restrict freedom of expression. With the recent amendments in internet law, state authorities (especially Telecommunications Authority) have been enabled to block internet content ahead of a court order, for issues related to national security, protection of public order, the prevention of crime and the protection of general health, even though the constitutional court had previously ruled that a similar law was unconstitutional.

The European Commission's 2014 Progress Report criticizes Telecommunication Authority's (TIB) excessive powers, underlining that "more than 50.000 websites are not accessible, only 6.000 of which had been banned by court order." The European Parliament and Council of Europe have also criticized Turkey for the disproportionate scope of the website bans.

The new Domestic Security Bill, that entered into force a few days ago, increases police powers to detain, search and wiretap people as well as use firearms and gives appointed governors the right to demand detentions or investigations of specific people without a prosecutor's order.

People are afraid that this bill by transferring the prosecutor's and judge's authorities to governors, would weaken the rule of law and separation of powers further and might pave the way for police violence. So in contrast with its declared aim, people are concerned that it might harm human rights and public safety.

When people complain about pressure on media, they refer to bans on covering topics and denying certain media outlets accreditation to cover public events. Turkish prosecutors

yesterday called for two journalists who featured Charlie Hebdo 's last cover in their columns to be jailed for four and a half years.

In 2014, Turkey was, after Russia, the country violating the highest number of judgments by the European Court of Human Rights (94 judgements). Turkey had violated the right to liberty and security 45 times, to a fair trial 31 times and to freedom of expression 24 times.

### **The ways through which fundamental freedoms can be improved**

An effective and preferably an institutional consultation mechanism with the Venice Commission and a more intensive dialogue with the European Commission on drafting and implementation of at least fundamental laws are very important.

Structured civil society consultation mechanisms should be developed as part of the legislative and policy-making processes.

The speedy implementation of the Action Plan on Prevention of ECHR Violations has to be a first priority and more attention should be given to the observation of the case law of the European Court of Human Rights regarding freedom of expression in the judiciary.

Adequate checks and balances on the power of law enforcement agencies should be provided. Negative approach towards institutional autonomy should be alleviated in general for an effective checks and balances system in the country.

Setting up an independent and impartial body to investigate police offences is of critical importance in this context. Also, clear rules on the use of force in line with international standard should be adopted.

The law on the National Human Rights Institution of Turkey should be revised in order to make it an independent body, adequately resourced, accountable to the public and with the participation of civil society groups.

Media freedom should be addressed as a matter of priority.

Democratic reaction and terrorist action should be separated.

### **Significance of the EU Accession Process**

All these positive changes can be realised if the EU accession process and hence reform process gains new momentum again and for this to happen:

As European Commission emphasises in different occasions, an active and credible accession negotiations taken seriously by both parties is of utmost importance;

The unilateral blockage on chapters 23 and 24 should be removing to encourage and support reforms on the rule of law and fundamental rights. The EU should be consistent and use the most effective tool in its hand;

Turkey has to place the accession process at the centre of its domestic policy choices not only at the rhetorical level but in practice as well;

Finally the decision makers in Turkey should not be uncomfortable with key elements of EU conditionality, particularly those that appear in the form of universal norms and values.