

# **OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process**

## **Participating State: Turkey**

**UPR Working Group Session and Date of Review: 35<sup>th</sup> Session, 01-02/2020**

## **Background**

1. Turkey has been a participating State in the former Conference on Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1973 and 1994, respectively, and has thus undertaken and recently reaffirmed a wide range of political commitments in the human dimension of security, as outlined in relevant OSCE documents.<sup>1</sup>

2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Turkey, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assistance activities as well as monitoring and providing assessments, advice and recommendations relating to the implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Turkey and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Turkey.

## **Election-related activities**

4. Following an invitation from the authorities of the Republic of Turkey and based on the recommendations of a Needs Assessment Mission, ODIHR established an Election Observation Mission (EOM) to observe the 24 June 2018 early presidential and parliamentary elections. On election day, the ODIHR EOM was joined by observer delegations from the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE) to form an International Election Observation Mission.

5. The EOM final report concluded that “the elections offered voters a genuine choice despite the lack of conditions for contestants to compete on an equal basis. The incumbent president and his party enjoyed a notable advantage in the campaign, which was also reflected in excessive coverage by public and government-affiliated private media. The restrictive legal framework and powers granted under the state of emergency limited fundamental freedoms of assembly and expression essential to a genuine democratic process. Still, citizens demonstrated their commitment to democracy by participating in large numbers in campaign

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<sup>1</sup> <https://www.osce.org/odihr/76894>; <https://www.osce.org/odihr/76895>.

rallies and also on election day.” (all ODIHR reports on Turkey are available at <https://www.osce.org/odihr/elections/turkey>).

6. The priority recommendations in ODIHR’s final report on the 24 June 2018 early presidential and parliamentary elections included:

- a) Existing legislation should be amended in line with ODIHR recommendations to address key shortcomings, enhance its clarity, and to harmonize all election-related laws to provide a cohesive framework. Further, the Supreme Board of Elections (SBE) should fully exercise its regulatory authority in a manner consistent with the law.
- b) To increase political pluralism and representation in the parliament, consideration could be given to lowering the threshold for parties to qualify for seat allocation.
- c) To enhance transparency, the minutes and decisions of election boards at all levels should be published in a timely manner. Consideration could also be given to opening election boards meetings to the public.
- d) To have consistent implementation of electoral legislation and procedures, the SBE should provide guidance and training for lower level election bodies.
- e) In line with international standards and good practice, the requirements on eligibility of political parties to contest the elections should be less restrictive. Once a party is registered, requirements for eligibility to run should be minimal.
- f) Authorities should take necessary measures to ensure that election campaigning is conducted in an atmosphere free from intimidation and fear of retribution, and undertake effective campaign oversight by conducting thorough investigations into all campaign-related offences. Campaign regulations should be fully adhered to, and perpetrators prosecuted for applicable criminal and administrative offences.
- g) Authorities should implement mechanisms to ensure a clear separation between the State and party to prevent candidates from using the advantage of their office for electoral purposes. In addition, an effective sanctioning mechanism against the misuse of administrative resources should be established.
- h) The legal framework should be amended to bring it in line with international obligations on freedom of expression and media freedom. All media related cases should be dealt with in compliance with Article 10 of the ECHR on freedom of expression and relevant ECtHR case law.
- i) As previously recommended, the authorities should refrain from applying anti-terrorism legislation to prosecute journalists based solely on the content of their reporting. Defamation, libel, and insult of state officials should be decriminalized. Media outlets should be able to operate free from intimidation or pressure.
- j) To ensure voters are able to vote free from intimidation and fear of retribution, the police presence in and around polling stations should be limited to ensuring public

order and safety. In line with good international practice, only the BBC chairperson should have authority to call the law enforcement officers into the polling station.

- k) The constitutional safeguard that prohibits amendments to election legislation to be applied to elections within one year from adoption should be adhered to in line with international good practice. In addition, any amendments to the legal framework should be adopted in an inclusive manner, including public consultation.

7. On 17 December 2018, ODIHR and the Venice Commission adopted a Joint Opinion on Amendments to the Electoral Legislation and Related “Harmonisation Laws” adopted in March and April 2018.<sup>2</sup> The amendments pertain to the Law No. 298 on Basic Provisions on Elections and Voter Registers, Law No. 2839 on Parliamentary Elections, Law No. 6271 on Presidential Elections, and Law No. 2820 on Political Parties.

8. The Joint Opinion concluded that “successful electoral reform should be built on at least the following three elements: 1. Clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2. Adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3. Political commitment to fully implement the electoral legislation in good faith. In particular, the Venice Commission and ODIHR stress that an open and transparent process of consultation and preparation of the amendments increases the confidence and trust in the adopted legislation and in the state institutions in general.” Furthermore, the Venice Commission and ODIHR “consider it problematic that, contrary to international standards, late amendments were made to the electoral legislation, including its fundamental elements, just a few weeks before elections, in a hasty and non-inclusive way.”

9. In the Joint Opinion, ODIHR and the Venice Commission recognize “some positive steps that address prior recommendations, such as reducing the minimum age for standing for election to the Parliament, allowing independent presidential candidates to run and providing voting with mobile ballot box.”

10. To further improve the compliance of the legislation with international human rights standards and OSCE commitments, the Venice Commission and ODIHR made the following recommendations:

- a) Reconsider the composition of the electoral administration, in particular the Ballot Box Committees, in order to better ensure its impartiality.
- b) Reconsider the electoral threshold for the election of Parliament; while the effect of the threshold is somewhat mitigated by the possibility to form alliances introduced by the amendments, it remains extremely high.
- c) Reconsider the possibility for any voter to give notice to the law enforcement personnel and the respective obligation for the police to come into the polling station.
- d) Submit relocation of polling stations on security grounds to strict, clear, and objective parameters for its application with the aim to ensure that the right to vote is not unduly restricted.

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<sup>2</sup> <https://www.osce.org/odihr/elections/turkey/407078>.

- e) Adopt legislative provisions ensuring respect for the obligation to stamp ballots as a safeguard of the validity of the poll.
- f) Stipulate again in the legislation the principle of equality in the size of polling stations, and providing for a maximum number of voters per polling station.
- g) Reconsider the provision allowing voters in the same building to be assigned to different polling stations.
- h) Require a deposit from independent presidential candidates only when the criteria for registration are satisfied.
- i) Respect the constitutional ban on late amendments to fundamental aspects of electoral legislation.

### **Tolerance and non-discrimination issues, including incidents of and responses to hate crime**

11. OSCE participating States have committed to promote tolerance and non-discrimination and to combat hate crime, and ODIHR supports states in their implementation of those commitments. ODIHR produces an annual report on hate crime<sup>3</sup> to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR also helps participating States to draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and their law-enforcement officials, prosecutors and judges; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

#### *Addressing hate crimes*

12. Information concerning Turkey in the most recent (2017) edition of the annual hate crimes reporting<sup>4</sup> includes:

- Overview of officially reported data

13. Turkey regularly reports hate crime data to ODIHR. Turkey's Criminal Code contains a specific penalty-enhancement provision. Data are collected by the Interior Ministry and the Ministry of Justice and are not publicly available.

14. In respect of the hate crime data collection mechanism in Turkey, ODIHR has observed that when a crime is reported, a criminal record is opened. Crimes that contain a bias element are recorded in the same way as other crimes and there is no specific procedure for recording or investigating hate crimes. The offences are recorded electronically within the UYAP system (National Judicial Network System). They are taken from it within the scope of the Official Statistics Programme and compiled annually on the basis of the individuals accused

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<sup>3</sup> <http://hatecrime.osce.org>.

<sup>4</sup> <http://hatecrime.osce.org/turkey>.

and the offence, all in accordance with the articles and paragraphs in the Turkish Criminal Code and special laws. The Directorate General for Criminal Records and Statistics of the Ministry of Justice stores the hate crimes statistics as set out in the Turkish Criminal Code.

15. In 2017, Turkey reported 13 hate crimes recorded by the police, 1967 cases recorded by prosecution and 500 cases where sentences were imposed. Discrepancy between the numbers registered by police and prosecutors is due to the fact that most crimes are registered by prosecutors, rather than police. Prosecution and sentencing data only include crimes of incitement to hatred and discrimination.

16. In 2017, ODIHR concluded that Turkey's law enforcement agencies have not recorded the bias motivations of hate crimes.

- National developments

17. Turkey continued implementing ODIHR's Training on Hate Crimes for Law Enforcement (TAHCLE) programme, on the basis of a memorandum of understanding signed in 2016. Several thousand police officers have been trained on hate crimes.

- Overview of incidents reported to ODIHR by civil society

18. In 2017, 107 incidents in Turkey were reported to ODIHR by civil society organizations. 95 concerned incidents with a bias against other groups – sexual orientation and gender identity and most of those (89) were violent attacks against people.

#### *Addressing racism and xenophobia (including national minorities and migrants)*

19. For 2016, two hate incidents motivated by racism and xenophobia were reported to ODIHR by civil society. One of them, a violent attack, was against a group of foreign transgender individuals.

20. For 2017, three hate incidents motivated by racism and xenophobia were reported to ODIHR by civil society, two of which were incidents against refugees from Syria. All three incidents were violent attacks against people.

#### *Addressing anti-Semitism and intolerance against Muslims, Christians and other religions*

21. Every two years, ODIHR publishes Holocaust Memorial Days: An overview of remembrance and education in the OSCE region<sup>5</sup> to highlight good practices of participating States regarding Holocaust commemoration and education. For the 2015 report, ODIHR did not receive information from Turkey. For the 2018 edition, Turkey submitted a response to the ODIHR's questionnaire.

22. For 2015-2017, Turkey did not report anti-Semitic hate crimes; there was one (in 2016) hate incident with anti-Semitic bias reported by civil society organizations.

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<sup>5</sup> <https://www.osce.org/odihr/hmd2018>.

23. For 2016, eight hate incidents motivated by intolerance against Christians were reported to ODIHR by civil society. Four of these were attacks against property, and three were cases of threats.

24. For 2017, nine hate incidents motivated by intolerance against Christians were reported to ODIHR by civil society. Five of these were attacks against property, and three were cases of threats. Four of these cases affected Protestant Christians or their churches.

#### *Women's rights and gender equality in the context of tolerance and non-discrimination*

25. For 2017, no hate crimes motivated by bias against a person's sex were reported to ODIHR by Turkish authorities or by civil society organizations. Turkey also did not report hate crimes motivated by bias based on sexual orientation and gender identity. Civil society organizations reported 95 hate incidents motivated by this bias – most (89) of them being violent attacks against people, five being threats and one attack against property.

26. For 2016, neither Turkish authorities nor civil society organizations reported hate crimes motivated by bias against gender. Turkey also did not report hate crimes motivated by bias based on sexual orientation and gender identity. Civil society organizations reported 75 hate incidents with this bias, most of them (73) being violent attacks against people. The other being threat (1) and attack against property (1).

27. For 2015, no official data for hate crimes motivated by bias against a person's sex is available and no data on hate incidents motivated by these biases is available from civil society organizations. Turkey also did not report on hate crimes motivated by bias based on sexual orientation and gender identity. Civil society organizations reported 54 hate incidents motivated by this bias, out of which 47 were violent attacks against people, 3 threats against people and 4 attacks against property.

#### **Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)**

28. ODIHR expressed concern in November 2016 over widespread reports of torture and ill-treatment by police in Turkey against persons in detention, including human rights defenders, following an emergency decree issued on 23 July 2016, which removed crucial safeguards against torture and ill-treatment, following an attempted coup d'état.<sup>6</sup>

#### **Other assessments and recommendations contained in ODIHR reports on thematic human dimension issues**

29. The ODIHR report "The Responsibility of States": Protection of Human Rights Defenders in the OSCE Region (2014–2016)<sup>7</sup> included information about a number of cases involving human rights defenders in Turkey. The following are excerpts from the report.

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<sup>6</sup> <http://www.osce.org/odihr/278597>.

<sup>7</sup> <https://www.osce.org/odihr/341366>.

30. A Turkish human rights lawyer interviewed by ODIHR, who regularly conducts detention visits in Istanbul to represent indigent clients, expressed concern over reduced access to closed facilities since the attempted coup d'état, as well as alleged encroachments on the rule of law and judicial independence in political cases, which have allegedly impeded administrative review.

31. In its input to ODIHR, the Ministry of Justice highlighted a long list of legal restrictions on constitutional rights to freedom of expression and the media, which entered into force in 2012.<sup>8</sup> The provisions included: increased penalties for disclosing confidential information through the media; a lengthened time period for the prosecution of crimes committed through the press; criminalization of printing and publishing notices and statements by “terrorist organizations”; criminalization of “legitimizing” or “praising” terrorist organizations, including by “attending illegal meetings and demonstrations”, among other acts; and the criminalization of “alienating” or “discouraging” people from enlisting for military service.

32. Turkey noted that it has imposed legal restrictions on its constitutional protection of freedom of peaceful assembly, which provide a multi-faceted obligation of prior notification, among others.<sup>9</sup> The government informed ODIHR that the obligation comprises a notification requirement, rather than a preventive requirement of permission. However, the International Center for Not-for-Profit Law (ICNL) identified this and other restrictions as “mostly in breach of the Constitution and international standards,” because they provide limitations that allow “arbitrariness in restriction of the exercise of freedom of assembly.”<sup>10</sup>

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<sup>8</sup> See amendments introduced with the Law No. 6352, which entered into force on 5 July 2012, on Amendments to Certain Laws to Enable Judicial Services and on Postponement of Litigation and Sentences Related to Crimes Committed through the Press; and the amendments introduced with the Law No. 6459, which entered into force on 30 April 2012, on Amendments to Certain Laws Regarding Human Rights and Freedom of Speech.

<sup>9</sup> See Articles 3, 9 and 10 of Law No. 2911 on Demonstrations and Meetings (1983); and Article 34 of the Constitution of the Republic of Turkey (1982).

<sup>10</sup> <http://dev01.icnl.org/demo/assembly/wp-content/uploads/2014/09/Turkey-country-note.pdf>. In particular, the ICNL observed that Articles 9–11 of Law No. 2911 (ibid.) require, inter alia: an organizing committee of seven people over 18 years old, who will organize and participate in the assembly; who will all sign a notification to the province or district governorship, and will submit that notification during working hours, 48 hours prior to the assembly. The notification must include the purpose, date and exact duration of the meeting; the IDs, occupations, work addresses, and residence certificates of the organizing committee members, and any additional documents requested through bylaws. Under Article 23 of the Law, an assembly is illegal if the notification is not submitted in advance, giving security forces authority to intervene according to Article 24.